

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

6 UNITED STATES OF AMERICA . 4:17-CR-00419
7 VERSUS . HOUSTON, TEXAS
8 GAZELLE CRAIG, D.O, AND . JANUARY 29, 2018
9 SHANE FAITHFUL . 10:26 A.M.

14 TRANSCRIPT OF JURY SELECTION AND DAY ONE OF JURY TRIAL
15 BEFORE THE HONORABLE DAVID HITTNER
16 UNITED STATES DISTRICT JUDGE

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PROCEEDINGS

2 THE COURT: Good morning, ladies and gentlemen. I'm
3 Dave Hittner, one of the judges of the United States District
4 Court for the Southern District of Texas. I want to invite you
5 to the next step on your jury service.

14 Rather than do it from up here, let me get my
15 microphone, so I can come down there.

16 Now, the first challenge I have is one of the
17 secrets is the judge's robe has a pocket. The trick is to find
18 the pocket. Here it is. Sometimes I have trouble. It is
19 really hidden. They hide it from the judges too.

20 I'm going to come down and we are going to do it
21 from down there.

22 Okay. As we begin, nothing is 100 percent, so I
23 say that 99 percent of the folks that have served on a jury
24 when I have had the opportunity being a state judge and a
25 federal judge found it to be very enlightening, or they enjoyed

10 : 28 1 their time with us. Hopefully, you will too. We can't do it
2 without you here. The trial by jury is guaranteed by the
3 Constitution, and we are glad to have you here. And I will
4 discuss the differences a little bit between a federal court
10 : 28 5 and state court.

6 Now, even the judge served on a jury. I was an
7 elected state judge for about eight years and then I came over
8 here 31 years ago. Eight years, I was elected countywide and
9 then I came over here by presidential appointment, nomination
10 10 by the President, confirmed by the Senate. There were three
11 11 levels of judges that have that; the U.S. Supreme Court, the
12 12 U.S. Court of Appeals and the U.S. District Court. So we are
13 13 sort of known as Article III judges.

14 Everybody says, Why do you have a lifetime
10 : 28 15 appointment? It is very nice. It sure beats running for
16 16 office. It goes back to colonial times. When King George was
17 17 displeased with what his colonial judges were doing here in the
18 18 colonies, he either fired them or cut off their money.

19 Well, if you look in the Declaration of
20 20 Independence, one of the complaints against the King was just
21 21 that. The control of the colonial judiciary. And when they
22 22 wrote the U.S. Constitution, they wrote in under Article III
23 23 that, as far as the federal judges in those three categories,
24 24 that they would have lifetime appointment and you may not
10 : 29 25 reduce their salary while we are in office. The reason being

10 : 29 1 is, right from the beginning, to avoid crown influence on the
2 judiciary. So that is why I'm most fortunate to be in one of
3 those categories.

10 : 30 4 Also, I served on a jury. If you want to look to
5 the corner of the jury box, there are my juror badges. I
6 served a week and a half on a state jury when I was a state
7 trial judge. And then since I have been on the federal court,
8 I have gone to JP court, justice of the peace court jury
9 service and City of Houston traffic court. So we all serve on
10 a jury. All right? We all serve on a jury. And we are going
11 to move this case along.

12 Sometimes the concept of jury service is not too
13 clear with young people, and we had a case that went on for
14 quite a while, really quite a while. And the students
10 : 30 15 apparently in -- what is it? I have it right here. In the
16 second grade class at Katy Independent School District worried
17 about their teacher not coming back. So if you will look over
18 there to the corner, all the way in that far corner, you see,
19 sort of, a big white poster. I got a card from every kid in
20 the class. They drew a stick figure of themselves, and I just
21 blew it up poster size. That's where the jury room is. This
22 is what it says:

23 It says "Dear Mr. Judge, please let my teacher
24 come back to school soon. We really do miss her." So
10 : 31 25 everybody serves on jury duty, and we are just glad to have you

10 : 31 1 all here.

2 Let's talk about what kind of court this is.

3 This is the highest level of trial court in the federal system.
4 In effect, ancillary to this court, you have got the United
10 : 31 5 States magistrate judges who try suits and they assist the
6 district court. You have got the United States bankruptcy
7 court, and almost every federal agency has their own appellate
8 process within the agency, everything from the Veterans
9 Administration to Social Security to the Energy Administration,
10 and they have administrative law judges assigned there. But
11 they appeal that usually to the one judge federal court. We do
12 a lot of -- especially on Social Security appeals. And then
13 from here, if anybody appeals -- anyhow, this is the last stop
14 we actually have jurors in the box. We are going to continue
10 : 32 15 on up the line.

16 The country is divided into 12 circuits,
17 appellate circuits. They are called circuit courts, circuit
18 judges. We are in the Fifth Circuit. Texas, Louisiana and
19 Mississippi are in the Fifth Circuit, so all the appeals from
20 those three states go to the United States Court of Appeals for
21 the Fifth Circuit, and they sit in New Orleans. That's where
22 their headquarters are, but the judges come from all three
23 states. We have got about five or six circuit judges right
24 here in the building, but they sit in panels of three. They
25 don't hear any evidence or whatever. What they do, the

10 : 32 1 transcript of what the trial is -- just like you see Mayra
2 Malone here, our official court reporter, is taking it down.
3 They will get a transcript; read the transcript. The attorneys
4 make arguments or they file briefs, and then some of them are
10 : 33 5 allowed to go to New Orleans and actually argue the case to the
6 three judges. Then they make their decision.

7 Now, from there, of course, a case could be
8 appealed to the United States Supreme Court in Washington;
9 however, the Supreme Court takes only the cases it wants to
10 10 hear, not as a matter of right, like you go up to the court of
11 11 appeals.

12 12 Each year I call the clerk of the Supreme Court
13 to find out what their business was for the last year. In the
14 last year, the last term, 6,475 cases were appealed to the
15 15 United States Supreme Court. They actually wrote opinions on
16 just 62 cases. So they just take cases of major constitutional
17 import. Or sometimes the circuits may differ. For instance,
18 let's say the Second Circuit, which is New York, Vermont and
19 Connecticut, decide a case a certain way. Then almost the
20 exact type same case is heard on the Ninth Circuit, which takes
21 in the whole West Coast. And they decide it a different way,
22 so that's a conflict of circuits. So, occasionally, the
23 Supreme Court will take that case also. But that's, in effect,
24 the pecking order, shall we say, of federal courts in the
25 25 United States.

1 Let's talk about the duration -- well, first of
2 all, let me tell you what my work day is. My work day when I'm
3 in trial is 10:00 a.m. to 6:00 p.m. That allows the jury to
4 get in after the rush hour and to leave after the rush hour and
5 still get a full day, like 9:00 to 5:00 in. From 9:00 to
6 10:00, I do hearings in other matters. Of course, in civil and
7 criminal. We do both as a federal district court.

17 By the way, this is where all the judges usually
18 begin, all the junior judges, and they move upstairs to the
19 monster courtroom. I decided to stay here and I snatched all
20 the space across this end of -- right in this area and down
21 this whole side of the building, so I traded it because a
22 federal judge can bark here just as well as he or she can
23 upstairs. And, of course, I had this pole.

When I first got here, I thought, let's move that pole. I'm a federal judge, you can do whatever you want. I

10 : 36 1 want to get rid of that pole. So they did an engineering
2 study. It's a weight-bearing pole for the whole building. I
3 said, See what you can do with it. They ran a study and it
4 would be at least \$250,000 to get big girders across here and
10 : 36 5 just to get rid of that pole. Some of you, I know, are
6 engineering -- in fact, one is a structural engineer. I
7 remember reading the background. And they said they still
8 couldn't guarantee it wouldn't crash in on the eighth floor, so
9 I said, I'll keep it.

10 : 36 10 But when I did the Stanford trial, they upgraded
11 the courtroom, put in the TV screens, one for the jury at this
12 far end and then for the gallery out here, put the sound system
13 in. For people who are hearing challenged, we have special
14 hearing. They also have -- up there is a TV camera that
10 : 36 15 doesn't go anywhere but down the hall. There were so many
16 people that were around here that we had to have an auxiliary
17 courtroom, so we have a TV camera. But as far as I know,
18 that's all it is. I mean, just for up here on the floor.

19 : 37 19 You know the old story -- if any of you have been
20 in public relations or in the media, see if you know the answer
21 to this. You are told every microphone is a -- hot mic -- is a
22 live microphone. So anytime you see a microphone, don't assume
23 it's dead. Okay. But, in any event, that's where we are as
24 far as this goes.

25 10 : 37 25 Let's talk about the duration of this trial. In

10 : 37 1 federal court, cases can last any length of time. Years ago, I
2 had the three City Hall bribery cases here in Houston, all
3 three. The first one lasted about three and a half months, the
4 second one, two and a half, and the third one, another two
5 months.

10 : 37 6 My colleague, Judge Werlein, about two years ago,
7 had a case scheduled for five months -- I mean, scheduled for
8 seven months and it ended in the fifth month. The IBM
9 litigation, civil litigation in New York about 50, 60 years
10 ago, lasted over a year with the same jury.

10 : 38 11 I will tell you this: If you are selected on
12 this jury, it will be an extremely short case for federal
13 court. Testimony will last probably through this week and a
14 little into next, but it's an extremely short case for what we
15 usually try in the federal system.

10 : 38 16 When I get into some of the details, you will see
17 it's an interesting case and you will learn something. For
18 instance, the last case I tried was a civil case on the Federal
19 Odometer Act, in other words, selling used cars nationwide,
20 having rolled back the odometer. And we had somebody who is
21 the national expert that just did this, and we had two law
22 firms who specialized just in this kind of a case. It was a
23 civil case. That was last week. That's what is interesting
24 about this business. There is always something new coming in.

10 : 38 25 I want to talk to you about civil or criminal.

10 : 38 1 Now, let's assume this is a civil case, like a contract case, a
2 civil rights case, an odometer case or something like that.
3 The plaintiff, that's the person who brings the case, must
4 prove his or her case, each element, by a preponderance of the
5 credible evidence. Lawyers use this very often: Picture the
6 scales of justice; a slight tipping is the preponderance of the
7 evidence.

10 : 39 8 Now, let's assume this may be a criminal case.
9 If it's a criminal case, then the government must prove its
10 case against the defendant beyond a reasonable doubt. That's
11 not beyond all doubt, not beyond a shadow of a doubt but beyond
12 a reasonable doubt.

10 : 39 13 And if this is a civil case or a criminal case, I
14 will explain to you and give you instructions on what those
15 different burdens of proof are, depending upon if it is a civil
16 or criminal case.

10 : 40 17 As I ask you some questions along the way, I may
18 even cut you off or just ask a general question because this is
19 the key. And let's say -- I know we have some people who are
20 attorneys. We have some people in the medical profession or
21 who have spouses in the medical profession. I have gone
22 through all of your juror forms.

10 : 40 23 The key question is, let's say something comes up
24 that you have had some sort of experience along the lines. It
25 would be: Would that prohibit you from being fair and

10 : 40 1 impartial in this case without having heard any of the
2 evidence? And I always insist, if I do the voir dire, or the
3 attorneys do, that they add that phrase on. Because, you know,
4 we all have our own background. I sat as a judge. I had
10 : 40 5 physicians sitting on medical cases. I have had engineers
6 sitting on engineering cases. I have had lawyers sitting on
7 cases. The thing is: Would that prohibit you, whatever it is
8 in your background, prohibit you from being fair and impartial
9 in this case, again, without having heard any of the evidence?

10 : 41 10 Now, I will tell you this. This is a criminal
11 case. It's a criminal case. I do want to tell you at the
12 beginning, I know a lot of you have sat on state court cases.
13 We're a little bit different here, not that we are any better,
14 again, but we are just a little bit different. In federal
10 : 41 15 court, the judge alone does the sentencing. So if this is a
16 criminal case, you will be asked to decide the guilt or
17 innocence of a defendant or the defendants, but you will not
18 then -- once you -- if you reach a guilty verdict, come back in
19 and listen to more testimony on the sentencing aspect.
20 Sentencing is up to the judge in the federal system. So it is
21 different than the state system, and it is not any better, any
22 worse; it is different. By the way, the one exception to that
23 is if there is a federal, what is it, if there is a federal
24 death penalty case. If there's a death penalty possibility,
25 then the jury comes back in in that case to rule on that.

10 : 42 1 That's the one case basically where you come back in.

2 I'm going to read you a brief description of the
3 case. Both counsel have agreed on this. Let me get it. This
4 is just a brief overview. You can see the items that we are
10 : 42 5 going to be talking about. It is something really cutting edge
6 in today's society. All right?

7 There are two defendants in this case. One is a
8 physician, Dr. Gazelle Craig, and the other defendant,
9 Mr. Shane Faithful. The United States, that's the government,
10 alleges that the defendants ran an illegal pill mill called
11 Gulfton Community Health Center.

12 The United States further alleges that the
13 defendants provided to patients controlled substances,
14 including opioids and muscle relaxants, through prescriptions
10 : 43 15 that had no legitimate medical purpose and were outside the
16 course of medical practice.

17 The defendants, according to the United States'
18 allegation -- that's just their allegations; you haven't heard
19 any evidence -- okay -- charged each patient -- defendants,
20 according to the U.S., the allegations, charged each patient
21 approximately 250 to \$300 for office visits where they
22 allegedly received the prescription of an opioid and muscle
23 relaxant, along with other noncontrolled medications that are
24 documented in the medical records. Based on these allegations,
25 and others, the defendants are charged with -- now, this is

10 : 43 1 what the defendants are charged with. Okay? Each defendant is
2 charged with one count of conspiring to unlawfully distribute
3 controlled substances and three counts of aiding and abetting
4 the unlawful distribution of controlled substances.

10 : 44 5 Now, what does the defense say? The defense, the
6 defendants, through their lawyers and themselves, deny these
7 allegations, and they have pleaded not guilty to these charges.

10 : 44 8 Now, let's talk about one thing. And this is the
9 key thing we are going to talk about before we get into a few
10 questions for each of you. All right? What about burden of
11 proof? We talked about that. Burden of proof, beyond a
12 reasonable doubt. I'm going to use an example that -- not you
13 but maybe somebody you know. If you have ever been -- I can't
14 put you in a position. Let's say somebody you know has been
15 called to traffic court. Okay? That's a criminal type of
16 offense. Okay? So what does the government -- what does, say,
17 the police officer need to prove? Well, you need to prove,
18 number one -- let's say that you are in Harris County. That
19 you were behind that wheel. That there was a stop sign. And
20 according to the officer, for no apparent reason, you cruised
21 right through it. Unless the government proves each of those
22 items, then they haven't proven it beyond a reasonable doubt.
23 They have to prove it beyond a reasonable doubt. And, of
24 course, the defendant doesn't have to take the stand. As some
25 of you know, they don't have to take the stand. Now, the

10 : 45 1 presumption of innocence is guaranteed by the Constitution.
2 Every defendant coming into a criminal case, whether it is
3 traffic court or up here in the district court, has to be
4 presumed to be not guilty until the government proves each and
5 every element of every offense beyond a reasonable doubt.

10 : 45 6 Does anybody have a problem with that
7 constitutional right? I'm going to explain it some more.
8 Let's talk possibly about Third World countries. I have used
9 this for years, 30 some odd years with juries because I really
10 believe in it. In some Third World countries, if a person is
11 picked up by the police, they are presumed to be guilty and
12 they have got to prove themselves innocent. Just think about
13 that. That has never been the way we try cases in criminal
14 court in criminal courts in the United States. You are
10 : 46 15 presumed to be innocent and let the government prove it.

16 Does anybody have a problem with that burden?

17 Okay. Now, the defendant has no obligation, no
18 requirement to testify. In fact, their lawyers are under no
19 obligation to ask any questions. I know that they will, but
20 they can remain mute. They don't have to say a thing. It is
21 up to the government to prove each element of each of those
22 charges beyond a reasonable doubt.

23 Now, you have also heard many times, well, an
24 indictment was handed down against defendant so and so. Now,
10 : 47 25 what about that?

1 By the way, in the federal system -- I think now
2 also in the state system, but in the federal system, you could
3 be called up like this and be assigned to a grand jury for 18
4 months. So we are picking here a petit jury as compared to a
5 grand jury.

What does a grand jury do? It is made up of a group of folks, usually 23, and you need 16 at least to get an indictment. I believe that's still the requirement. But in any event, the grand jury assembles and listens only to the government's evidence. The defendant is not in there and the defendant's lawyer is not in there. Sometimes they don't even know that's going on. Okay? So the grand jury sits and it hears only the government's side, not anything else. No cross-examination. No nothing. And based upon what the government shows, if the grand jury -- and I'm going to oversimplify this -- feels that there is enough to go to a trial jury, that's what they do. So an indictment is no evidence whatsoever of guilt. It's the mechanism that gets a case to trial.

20 Anyone here have a problem with that, with our
21 grand jury system?

22 Has anybody here, by the way, served on a grand
23 jury.

24 Yes, ma'am. You want to stand up just for a
25 second. When was that?

10 : 48 1 PROSPECTIVE JUROR: When was it?

2 THE COURT: Yes.

3 PROSPECTIVE JUROR: Years ago.

4 THE COURT: Whereabouts?

10 : 48 5 PROSPECTIVE JUROR: Here in Houston.

6 THE COURT: In state court?

7 PROSPECTIVE JUROR: Federal.

8 THE COURT: Federal?

9 PROSPECTIVE JUROR: Also a district court. I served
10 : 48 10 both.

11 THE COURT: Okay. Is there anything about that that
12 you think would prohibit you from being fair and impartial in
13 this case without having heard any of the evidence?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Okay. Thank you, ma'am.

16 Now, the last thing -- I think I also told you
17 about the sentencing. We have been over that.

18 We are going to start in right now with some
19 questions for each one of you. I'm going to move very quickly.
20 But let me tell you the deal I make with you is that in federal
21 court, the judge can mix it up a little more in the courtroom
22 than they can in state court. It is just the difference as far
23 as what the appeals courts have said we can do. So you are not
24 going to hear the same question more than once. And if any
25 lawyer keeps going on and on, they are going to hear from me.

With that as a background, I want to go down and

10 : 51 1 visit just briefly with each of you and to see some of the
2 questions you have. However, the first thing I want to do, you
3 are going to meet the attorneys. They are going to say who
4 they are and introduce their clients or their case agents. So,
5 remember, the burden of proof is on the government. So they
6 are going to go first and I'm going to introduce them first.
7 I'm just going to say, Counsel for the government, please
8 introduce yourself and everybody at your table.

9 MR. ARMSTRONG: Am I on the clock, Judge?

10 10 THE COURT: No. I told you it works. The clock
11 doesn't start 'til the opening stages. Just introduce yourself
12 and your staff, please.

13 13 MR. ARMSTRONG: Good morning, everyone. My name is
14 Scott Armstrong. I'm a prosecutor from the Department of
15 Justice. I have the honor and the privilege of representing
16 the United States in this case. I am joined by my trial
17 counsel, Devon Helfmeyer.

18 18 MR. HELFMEYER: Good morning, ladies and gentlemen.

19 19 THE COURT: They can't see you behind the pole.

10 : 52 20 MR. HELFMEYER: Good morning.

21 21 MR. ARMSTRONG: Also from the Department of Justice is
22 our paralegal specialist, Saba Mortezavi.

23 23 Joining us at counsel table are the two case
24 agents in this case from the Drug Enforcement Administration.
25 First, James Gainer.

10 : 52 1 THE COURT: Come up here, sir.

2 CASE AGENT GAINER: Good morning, everyone.

3 MR. ARMSTRONG: Second, Diversion Investigator Michael
4 Mills.

10 : 53 5 DIVERSION INVESTIGATOR MILLS: Good morning.

6 THE COURT: These are the folks you will be seeing.
7 Does anybody know either the attorneys or any of the case
8 agents from the DEA, Drug Enforcement Administration?

9 Now, we will hear from defense counsel. We have
10 two defendants. We have two attorneys, experienced defense
11 lawyers. Gentlemen, one at a time, please.

12 MR. LEWIS: Good morning. My name is Don E. Lewis,
13 and I represent the defendant, Gazelle Craig, that's seated
14 right here at the table.

10 : 53 15 MR. WILLIAMS: Good morning, ladies and gentlemen --

16 THE COURT: Hold it. Dr. Craig, is she over there?
17 Ask her to come forward.

18 MR. LEWIS: This is Dr. Gazelle Craig, and I represent
19 her. My name is Don Lewis.

20 MR. WILLIAMS: And I'm Cornel Williams. I have the
21 distinct honor this morning to represent Shane Faithful who is
22 accused in this case.

23 THE COURT: Mr. Faithful, come on forward.

24 Does anyone know the defendants or any of their
25 clients, the two clients?

10 : 54 1 No hands. Okay.

2 I'm going to read you a list of witnesses. These
3 are government witnesses. Keep in mind they may not call all
4 of these witnesses, but I'm going to read off the names and see
5 if you recognize any of them. I will tell Mayra, the court
6 reporter, you can have a list of this later. These are some of
7 the possible witnesses or some of the names that are going to
8 be floating around in this case: Olivia Caldwell, Gina Garcia,
9 Steven Gonzalez, Tonya Graham, Debbi Henneke, Michael Mills,
10 Shemetra Morgan, Loren Phillips, Dr. Graves Owen, Cesar
11 Saldana, Davis Webster, Gerrit Wolfhagen, James Gainer.

12 Anybody recognize any of those names?

13 No hands. Thank you.

14 One question lawyers sometimes ask and I will
15 ask: Does anyone recognize any other member of the jury panel?
16 Do you know anybody else, aside from when you were visiting
17 perhaps downstairs?

18 All right. Does anyone feel so negative for any
19 reason against the United States Government that you couldn't
20 be fair and impartial for the man and woman who are being
21 accused today?

22 Has anyone, any of you or anyone of your close
23 family members or friends been investigated by a federal or
24 state agency, to your knowledge? I needed to add that.

25 Okay. No hands.

10 : 56 1 You may hear -- now, you may hear testimony in
1 2 this case by an individual or individuals who are paid
3 government informers. If you are selected on the jury, you are
4 going to get an instruction from me at the ending of the case.
10 : 56 5 I'm going to read to you a portion of that instruction that you
6 are going to get at the end of the case, but it's dealing with
7 this possibility.

10 : 56 8 Keep in mind that it is in the past tense because
9 you are going to hear this at the end of the trial, so this is
10 part of the instruction you are probably going to get -- by the
11 way, it comes out of the Fifth Circuit pattern for the
12 attorneys. Okay?

10 : 56 13 The testimony of one who provides evidence
14 against a defendant as an informer for pay must always be
15 examined and weighed by the jury with greater care and caution
16 than the testimony of ordinary witnesses. You, the jury, must
17 decide whether the witness's testimony has been affected by
18 these circumstances, by the witness's interest in the outcome
19 of the case, if any, by prejudice against the defendant or by
20 the benefits that the witness may receive either financially or
21 as a result of being immunized from prosecution.

10 : 57 22 I'm not sure there is any immunization that goes
23 on, but maybe someone is just not going to be charged. I don't
24 know. Now, this is the key: You should keep in mind that such
25 testimony is always to be received with caution and weighed

10 : 57 1 with great care. You should never convict any defendant upon
2 unsupported testimony of such witness unless you believe that
3 testimony beyond a reasonable doubt.

10 : 57 4 After hearing that instruction, is there anyone
5 here who could not follow that instruction?

6 Thank you.

7 If you are on the jury, you are also going to get
8 an instruction by the end of the case that you are the sole
9 judges of the credibility of the witnesses. That's really
10 true. There are two judges in any case. I'm the judge of the
11 law, but you are the judges of the facts. That's what we have
12 a jury for. So you listen to the facts and then I will give
13 you the law which you should follow. There is a saying, which
14 is true, as they say, that you are the judges of the facts.
10 : 58 15 You are the judges of the facts, and the believability and the
16 credibility and what weight to be given to a witness is
17 strictly up to you.

18 Anybody have a problem with this instruction or
19 this rule?

10 : 58 20 You may also hear from witnesses who are -- you
21 may also hear from a witness, at least one -- we're not
22 referring to the defendant because, remember, there is no
23 obligation that the defendant need to take the stand. But we
24 assume that you may also -- you may hear from a witness who is
25 a physician. Just because a person is a physician, for that

10 : 59 1 point alone, will you give that person more credibility only
2 because and for the sole reason that he or she is a physician?

3 Anybody?

4 No.

10 : 59 5 Now I'm going to talk about another group of
6 witnesses with the same sort of question. You may also hear
7 from witnesses who are employed by the government, such as law
8 enforcement and DEA agents. That is Drug Enforcement Agency
9 [sic] agents. Just because a person works for the government,
10 for that point alone, will you give that person more
11 credibility only and for the sole reason that he or she earns
12 their living as a law enforcement officer?

13 No hands.

14 In other words, every witness coming up,
15 regardless of what they do for a living, has to be weighed.
16 And that's up to you completely.

17 Does anyone here have such a problem with the
18 court system generally that you are unable to listen to the
19 evidence and render an unbiased verdict?

11 : 00 20 Some people have problems in civil cases. There
21 are too many personal injury cases or, in this case, maybe too
22 many criminal cases, but nobody has a problem relative to that
23 point? Correct?

24 No hands.

11 : 00 25 Does anybody here have religious beliefs that

11:00 1 would prohibit you from standing in judgment of another person?

2 Have any of you participated in a citizens police
3 academy, police ride-along, explorer program, crime stoppers or
4 similar experience working with the police?

11:00 5 Yes, sir? Want to stand up, please.

6 PROSPECTIVE JUROR: I'm Number 3, [REDACTED]

7 THE COURT: I think it's Number 4.

8 PROSPECTIVE JUROR: I'm sorry. Number 4.

9 THE COURT: Credibility of witnesses. Okay. Go on.

11:01 10 PROSPECTIVE JUROR: I was in a police explorer post as
11 a Boy Scout.

12 THE COURT: Whereabouts?

13 PROSPECTIVE JUROR: Akron, Ohio.

14 THE COURT: Akron, Ohio. What agency was it? Was it
15 the sheriff or police department?

16 PROSPECTIVE JUROR: Akron Police Department.

17 THE COURT: Did you go on a ride-along?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Okay. Let me ask you this: Is there
20 anything about that that would prohibit you from being fair and
21 impartial in this case without having heard any of the
22 evidence?

23 PROSPECTIVE JUROR: I don't believe so.

24 THE COURT: You don't believe so. Can you be fair?

11:01 25 PROSPECTIVE JUROR: Yes, sir.

11:01 1 THE COURT: Okay. Have you, a family member or close
2 friend ever been treated by a physician for chronic pain?

3 Yes, ma'am? You're number what, ma'am?

4 PROSPECTIVE JUROR: Number 21.

11:01 5 THE COURT: Yes, ma'am. Who was it?

6 PROSPECTIVE JUROR: Who was the doctor?

7 THE COURT: No. Who was it that was treated?

8 PROSPECTIVE JUROR: Me. Sorry.

9 THE COURT: How long were you treated for?

11:01 10 PROSPECTIVE JUROR: Six months.

11 THE COURT: Okay. Has that problem passed at this
12 time?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Is there anything about that fact that
11:02 15 would prohibit you from being fair and impartial in this case
16 without yet having heard any of the evidence?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Yes, ma'am?

19 Hold it. Everybody is thinking about, the older
11:02 20 you get, you are going to get more hands.

21 Number 27, yes, sir?

22 PROSPECTIVE JUROR: You said a family member?

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: My mother-in-law currently has
11:02 25 advanced lung cancer and she has been treated since October of

11:02 1 last year.

2 THE COURT: Do you know what sort of pain medication
3 she's on?

4 PROSPECTIVE JUROR: Fentanyl, oxycodone, I think.

11:02 5 THE COURT: Do you understand that there are valid
6 reasons and if people have pain, they are entitled to be
7 treated by a physician, correct?

8 PROSPECTIVE JUROR: Correct.

9 THE COURT: Is there anything about that that would
11:02 10 prohibit you from being fair and impartial in this case without
11 having heard any of the evidence? Do you have a concern?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Is that all right? You are a
14 little bit --

11:02 15 PROSPECTIVE JUROR: No concern.

16 THE COURT: Okay. Great. Have a seat.

17 Yes, sir? This is Juror Number?

18 PROSPECTIVE JUROR: Number 10.

19 THE COURT: Yes, sir?

11:03 20 PROSPECTIVE JUROR: My former wife had rheumatoid
21 arthritis and was taking a lot of oxycodone.

22 THE COURT: Oxycodone?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: How long was she on that?

11:03 25 PROSPECTIVE JUROR: She has passed away.

11 : 03 1 THE COURT: She has passed away. To the best of your
2 knowledge, she was on there.

3 Any negative feelings about that? Did it serve
4 its purposes?

11 : 03 5 PROSPECTIVE JUROR: Yeah. But she got addicted to it.

6 6 THE COURT: She got addicted to it. Then at that
7 point, we will call you up later. Okay. We will call you up
8 later. It's not a negative that you have got to come see the
9 judge, like going to the principal's office. Instead of doing
11 : 03 10 it here, we will talk to you up front later.

11 11 Yes, sir? Do you want to stand up, please?

12 12 PROSPECTIVE JUROR: My brother-in-law --

13 13 THE COURT REPORTER: I cannot hear.

14 14 PROSPECTIVE JUROR: -- has been to various doctors for
11 : 03 15 pain.

16 16 THE COURT: What sort of ailment does he have?

17 17 PROSPECTIVE JUROR: It is headaches. I'm not really
18 sure.

19 19 THE COURT: Is he still on the medication?

11 : 04 20 PROSPECTIVE JUROR: Yes.

21 21 THE COURT: How long has he been on it, about?

22 22 PROSPECTIVE JUROR: Twelve years.

23 23 THE COURT: Twelve years. You know the allegations
24 are in this case writing prescriptions. Is there anything
25 about the facts of this case that you think would prohibit you

11:04 1 from being fair and impartial without having heard any of the
2 evidence?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you, sir.

11:04 5 Let's see. Yes, ma'am. Number 42?

6 THE COURT REPORTER: Judge, I'm sorry. I can't hear.

7 PROSPECTIVE JUROR: I'm sorry. I'm presently on
8 medication for chronic pain. I have been for a number of
9 years.

11:04 10 THE COURT: I will tell you what. If you have been
11 on, yourself, for chronic pain, let's call this witness up
12 later so we can move along.

13 Yes, sir?

14 PROSPECTIVE JUROR: My wife, since 2011, she has had
11:04 15 multiple back surgeries due to both congenital issues and an
16 accident, a pretty horrific accident, so she has been on
17 oxycodone and muscle relaxers and then there is another one. I
18 forget the name of it.

19 THE COURT: How long has he been on it? Ballpark?

20 PROSPECTIVE JUROR: Since 2011, the first surgery.

21 THE COURT: Is she still on these medications?

22 PROSPECTIVE JUROR: Intermittently.

23 THE COURT: As needed?

24 PROSPECTIVE JUROR: As needed.

11:05 25 THE COURT: Now, is there anything about that that

11:05 1 would prohibit you from being fair and impartial for these
2 folks without having heard any of the evidence?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Yes, ma'am? Number 39? I skipped over
11:05 5 you the first time.

6 PROSPECTIVE JUROR: No. I didn't think about it. My
7 daughter-in-law is -- has congenital back pain and has been on
8 it for years.

9 THE COURT: For years. Okay. We will call you up
11:05 10 later then.

11 Yes? Ms. 46? I'm sorry. I don't have my list
12 with me. When I get done calling you individually, I will get
13 your name.

14 PROSPECTIVE JUROR: My grandmother takes oxycodone,
11:06 15 Norco and then my grandfather took morphine when he was in
16 hospice care.

17 THE COURT: In the hospital?

18 PROSPECTIVE JUROR: In hospice care.

19 THE COURT: At home. How long was he on that?

20 PROSPECTIVE JUROR: He was on that for a few months.

21 THE COURT: Is that kind of the end of life --

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: For the pain?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Who was it? Your grandmother?

11:06 1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: What was she on or is on?

3 PROSPECTIVE JUROR: Norco. Previously was on Norco
4 and muscle relaxants for back pain.

11:06 5 THE COURT: Is she still on it?

6 PROSPECTIVE JUROR: She is not because she is in
7 kidney failure.

8 THE COURT: It had nothing to do then, as far as your
9 doctors know, the best you know, due to the drugs, is that
11:07 10 correct, as best you know?

11 PROSPECTIVE JUROR: I do not know. I'm sorry.

12 THE COURT: Let me ask you this: You have heard the
13 facts in this case. Do you think you can be fair and impartial
14 in this case without having heard any of the evidence?

15 PROSPECTIVE JUROR: Absolutely. However, I have to go
16 to the bathroom.

17 THE COURT: Go on.

18 MR. WILLIAMS: I have got to go too.

19 THE COURT: I will tell you what: What time is it
11:07 20 now?

21 THE COURT REPORTER: 11:07.

22 THE COURT: Let's do this. Kidding aside. If anybody
23 needs to use -- we have time. We are going to get this done
24 and get the jury selected. It is moving along quickly. If we
25 need to take a break, there are two lavatories right behind

11:08 1 this wall and there is another group of them all the way down
2 at the end of the hall and turn left. I usually don't take a
3 break, but if you have had a lot of coffee or whatever
4 downstairs. Let's see, it is now 10 after, let's take a --
11:08 5 with this many people -- a 15-minute break and we will get back
6 underway and wrap it up. Okay. So if you want to, you can
7 stand. If you want to stay around here, you like the
8 atmosphere of a courtroom. Nobody is excused from jury duty,
9 and don't talk about this case, please.

11:27 10 *(Court recessed at 11:08 a.m.)*

11 11 *(Court resumed at 11:27 a.m.)*

12 12 THE COURT: I have got only one or two more general
13 13 questions and then we will quickly go down the line and visit,
14 14 if we can just briefly, with each one of you and see if there
15 15 is something I want to ask and then we can move on.

16 16 All right. We are going to move quickly. We
17 17 talked about chronic pain. Correct.

18 18 The next one is: Has anybody been affected or
19 19 have a family member or close friend who you believe has been
20 20 affected by the so-called opioid, what is it, epidemic?

21 21 Yes, sir? Number 42, the opioid epidemic?

22 22 Number 43, yes, ma'am? I'm going to get
23 23 everybody's name, but we will call you up later.

24 24 Juror 42 is being called up already. That is

11:28 25 [REDACTED] and [REDACTED] Correct? Got that?

11:28 1 PROSPECTIVE JUROR: Number 3.

2 PROSPECTIVE JUROR: Number 21.

3 THE COURT: 21. Okay. Thank you.

4 PROSPECTIVE JUROR: Can I go back to the previous
11:28 5 question? Because then we had the whole bathroom thing.

6 THE COURT: What is that? Stand up, if you would
7 please, ma'am.

8 PROSPECTIVE JUROR: I was diagnosed with fibromyalgia
9 back in 2002, but I don't take anything for it. Nothing. And
11:28 10 then I have chronic migraines, for which I take a beta blocker.

11 THE COURT: Would anything about that prohibit you
12 from being fair and impartial in this case?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Okay. Thank you. That was [REDACTED]

11:29 15 Has anyone here ever been prescribed hydrocodone,
16 which is also known as Vicodin. And what else?

17 MR. WILLIAMS: Norco.

18 THE COURT: Let the record reflect that about one
19 half, at least, of the jurors raised their hands and now I ask
20 you this: Is there anything, because you have taken that
21 medication, that would prevent you from being fair and
22 impartial in this case without having heard any of the evidence
23 and both sides -- nobody would be on the short end of your
24 having that background. Anybody?

11:29 25 All right. Has anyone here had any negative

11:29 1 experience with -- and the name is carisoprodol but generally
2 known as Soma, or any other muscle relaxer -- let me ask you
3 this first: Has anyone here ever taken Soma?

4 Your number, please?

11:29 5 Keep in mind, I think half the people raised
6 their hand just for that.

7 I'm going to ask you again, Ma'am, is there
8 anything about that that would prohibit you from being fair and
9 impartial in this case without having heard any of the
11:30 10 evidence?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you, ma'am.

13 THE COURT REPORTER: I didn't see her number.

14 PROSPECTIVE JUROR: I'm 28.

11:30 15 THE COURT: Have you or a family member or close
16 friend ever worked at a pain management clinic?

17 Okay. Yes, sir? You are going to be coming up
18 and visiting with us. Thank you, sir.

19 All right. Yes, ma'am? Let me get -- that's

11:30 20 [REDACTED]?

21 PROSPECTIVE JUROR: My mother works in a pain
22 management clinic.

23 THE COURT: She works at a pain management clinic?
24 How long has she worked at that clinic?

25 PROSPECTIVE JUROR: Over 15 years.

11:30 1 THE COURT: Okay. We will call you up later also,
2 okay. Juror Number 26.

3 Yes, sir?

11:30 4 PROSPECTIVE JUROR: My wife is a physician and she
5 deals with a lot of that at the VA clinic.

6 THE COURT: I see that she is a physician and she does
7 some pain management work. I will call you down. I will visit
8 with you as we go down the individuals. I had it all marked
9 here ahead of time. Thank you.

11:31 10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: I'm going to broaden this out. Have you
12 or family member or close friend ever worked in a medical
13 clinic? I'm going to do go down quickly. We will start, what,
14 is it Juror Number 2? Yes, ma'am? What sort of a clinic?

11:31 15 PROSPECTIVE JUROR: Cardiology office.

16 THE COURT: Cardiology. Okay. Yes?

17 PROSPECTIVE JUROR: I worked at several hospitals in
18 the business office.

19 THE COURT: The business office. Thank you. Hold it.
11:31 20 Are you getting the numbers?

21 UNIDENTIFIED SPEAKER: Yes, sir.

22 THE COURT: This is Number 12. Yes, ma'am.

23 PROSPECTIVE JUROR: I worked in a hospital.

24 THE COURT: What area, please?

11:32 25 PROSPECTIVE JUROR: Early 1990s, I was a certified

11 : 32 1 nursing assistant and last couple years, sterile processing.

2 THE COURT: Okay. Yes, sir? Number 13?

3 PROSPECTIVE JUROR: My mother, my mother-in-law and
4 two aunts work as nurses.

11 : 32 5 THE COURT: Whereabouts? Any of them deal with pain
6 management?

7 PROSPECTIVE JUROR: They worked there a long time ago,
8 at least 15 years ago.

9 THE COURT: Fifteen years ago. Did you visit with
11 : 32 10 them about their job?

11 PROSPECTIVE JUROR: No. Not really.

12 THE COURT: I'm going to ask that general question as
13 to everyone who stood up. Yes, sir?

14 PROSPECTIVE JUROR: My sister is a physician.

15 THE COURT: What sort of physician?

16 PROSPECTIVE JUROR: She is a family practice doctor.

17 THE COURT: Okay. Does she do pain management?

18 PROSPECTIVE JUROR: I imagine she does.

19 THE COURT: Did you ever discuss that with her?

11 : 32 20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Yes, sir?

22 PROSPECTIVE JUROR: My wife's ex-husband was a
23 vascular surgeon. She worked in his office as a nurse.

24 PROSPECTIVE JUROR: My mother works at a headache and
25 pain management clinic.

11 : 33 1 THE COURT: We talked about that. Yes, ma'am?

2 PROSPECTIVE JUROR: This may not qualify, but I'm a
3 veterinary practice manager.

4 THE COURT: I saw that. I was going to ask you that.

11 : 33 5 PROSPECTIVE JUROR: I'm Number 29.

6 PROSPECTIVE JUROR: My brother is a physical
7 therapist.

8 THE COURT: Okay. He doesn't prescribe, does he, as
9 far as you know?

11 : 33 10 PROSPECTIVE JUROR: No.

11 THE COURT: Does he deal with pain measurement? Are
12 you sure? Do you know?

13 PROSPECTIVE JUROR: Sometimes he is referred to
14 patients with chronic pain, but he doesn't do anything other
11 : 33 15 than PT on them.

16 THE COURT: Yes, sir?

17 PROSPECTIVE JUROR: My sister is a physician
18 assistant.

19 THE COURT: And what sort of practice does she work
11 : 33 20 with?

21 PROSPECTIVE JUROR: Number 24, I haven't the slightest
22 idea, to be perfectly honest.

23 THE COURT: Thank you very much. What a brother,
24 right? Yes, sir?

11 : 33 25 PROSPECTIVE JUROR: Number 6. I have a sister that --

11:33 1 she gives dialysis treatments.

2 THE COURT: Okay. Anybody else?

3 Yes, sir? Number 40?

4 PROSPECTIVE JUROR: My father is an internist and my
11:33 5 mom works in his office.

6 THE COURT: What sort of -- general medicine?

7 PROSPECTIVE JUROR: Yes. Mostly diabetics.

8 THE COURT: Most diabetics.

9 Ma'am, you need to stand up so everybody can
11:34 10 hear. Yes? This is Number 45. Yes?

11 PROSPECTIVE JUROR: I worked as a counselor in an
12 abortion facility.

13 THE COURT: All right. Thank you.

14 Yes, ma'am? Number 36?

11:34 15 PROSPECTIVE JUROR: Over 20 years ago, I was a CNA at
16 St. Luke's Hospital.

17 THE COURT: CNA, certified nursing assistant.

18 PROSPECTIVE JUROR: Yes. And my daughter is a recent
19 grad, and she's a nurse right now.

11:34 20 THE COURT: Yes, ma'am?

21 PROSPECTIVE JUROR: I'm a registered nurse.

22 THE COURT: You are coming up later, or not?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Not yet. Talk to me about it, Number 46.

11:34 25 Well, what sort of, do you have any specialty?

11 : 34 1 PROSPECTIVE JUROR: Emergency.

2 THE COURT: Okay. Emergency medicine. Whereabouts?

3 PROSPECTIVE JUROR: In the Bryan/College Station area
4 and then I'm also an educator.

11 : 34 5 THE COURT: Okay. Thank you. Yes, ma'am? Number 30?

6 PROSPECTIVE JUROR: I'm a counselor with my church, so
7 I get a lot of clients that come in, but I don't do any
8 prescriptions.

9 THE COURT: Yes, sir? This is number?

11 : 35 10 PROSPECTIVE JUROR: Number 16. My brother and father
11 both worked for DMC in an administrative capacity. My mother
12 was an x-ray tech in an ER. My sister and her husband are both
13 veterinarians.

14 THE COURT: Thank you. We have some folks --

15 PROSPECTIVE JUROR: With the Veterans Administration.

16 THE COURT: I'm going to ask a general question.
17 Everybody that raised their hands -- except there are a couple
18 we have coming forward, that I ask you to come forward based
19 upon that general question. All right. As to those who raised
20 their hands, except for the ones that said we will talk to you
21 later, is there anything about the background that you have or
22 your relative has that would prohibit you, you feel, from being
23 fair and impartial in this case without having heard any of the
24 evidence?

11 : 35 25 No hands from those folks, but we will call the

11:36 1 ones that we have designated.

2 Okay? Earlier, I told you a little bit about
3 this case. Does anyone know or has anyone seen anything about
4 this particular case in the media, to the best of your
11:36 5 recollection, this particular case?

6 Number 27, we will call you up later, if you
7 think you may have. We'll talk to you later.

8 MR. ARMSTRONG: Was that Number 27, Your Honor?

9 PROSPECTIVE JUROR: Yes.

11:36 10 THE COURT: Yes, Number 27. This is the last question
11 and then I'm going to go down briefly, by the way, and talk
12 with each juror quickly, individually, so you can get a feel
13 for each individual.

14 Okay. Some of the evidence in this case may
11:36 15 include undercover audio and/or video recordings concerning
16 parties in this case.

17 Does anyone feel that just the use of such
18 technology would prohibit you from being fair and impartial to
19 both sides as a juror in this case?

20 There are no hands.

21 I'm now going to go down quickly, so I will visit
22 briefly with everyone and then we will start visiting up at the
23 bench.

24 Okay. Juror Number 1, [REDACTED] medical sales.
11:37 25 What sort of sales are you in, sir?

11 : 37 1 PROSPECTIVE JUROR: Histology and pathology.

2 THE COURT: Say that again.

3 PROSPECTIVE JUROR: Histology and pathology.

4 THE COURT: Histology, that's blood, isn't it?

11 : 37 5 PROSPECTIVE JUROR: No, it's biopsy tissue.

6 THE COURT: Okay. And you have a bachelor's of
7 science in genetics. Did you study anything about pain
8 management?

9 PROSPECTIVE JUROR: None at all.

11 : 37 10 THE COURT: In any part of your profession, do you get
11 into that at all?

12 PROSPECTIVE JUROR: No, I don't.

13 THE COURT: Okay. Thank you. [REDACTED]?

14 PROSPECTIVE JUROR: [REDACTED] yes.

11 : 37 15 THE COURT: I see you put down type of work
16 "nonapplicable." Have you ever worked outside the home?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: At that time what, did you do, please?

19 PROSPECTIVE JUROR: Cardiologist's office.

11 : 38 20 THE COURT: Cardiologist's office?

21 PROSPECTIVE JUROR: Yes. Mostly.

22 THE COURT: Who is the cardiologist?

23 PROSPECTIVE JUROR: Dr. Nasser in The Woodlands,
24 Texas.

11 : 38 25 THE COURT: All right. Thank you.

11 : 38 1 [REDACTED] let's see, even though you may be
2 coming up later, I just want to briefly go down these matters.
3 Okay. Business development, loan officer and security. One
4 child is in security, it looks like, correct? What sort of --
11 : 38 5 is that police or private security or what is that?

6 PROSPECTIVE JUROR: I'm not sure I understand what I
7 put there.

8 THE COURT: In other words, you stated here, right,
9 [REDACTED] right?

11 : 38 10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Children, you have male, 41; female, 34;
12 male 31. Grown children's type of work, is it landscaping?

13 PROSPECTIVE JUROR: My son is on parole.

14 THE COURT: Oh, okay. All right. That's security.

11 : 39 15 [REDACTED] what sort of technology? I see you
16 are a software engineer.

17 PROSPECTIVE JUROR: Oil and gas and manufacturing.

18 THE COURT: And you have a brother who is in the
19 police department in Akron, Ohio?

11 : 39 20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Do you ever discuss the business with
22 them?

23 PROSPECTIVE JUROR: Very rarely.

24 THE COURT: Do you know what position he is in in the
11 : 39 25 police department?

1 PROSPECTIVE JUROR: He was a prison guard for a while
2 and he was a beat cop.

3 THE COURT: Have you ever talked about the so-called
4 opioid epidemic with him?

5 PROSPECTIVE JUROR: No, sir, I have not.

6 THE COURT: All right. Thank you.

7 [REDACTED] it says you are an IT manager,
8 correct?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: For who, sir?

11 PROSPECTIVE JUROR: I am currently unemployed and
12 starting a new job next week.

13 THE COURT: Okay. The VA, we talked about, you have a
14 spouse that is a physician, correct?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Did we discuss what sort of --

17 PROSPECTIVE JUROR: She is an internist working at VA
18 Medical Center where she deals with all sorts of issues.

19 THE COURT: Deals with what?

20 PROSPECTIVE JUROR: Different type of cases with all
21 the veterans.

22 THE COURT: Okay. So she is -- is she board
23 certified?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And in what, internal medicine?

11 : 40 1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Any subspecialty?

3 PROSPECTIVE JUROR: No.

4 THE COURT: So she is doing general medicine, correct?

11 : 40 5 PROSPECTIVE JUROR: Correct.

6 THE COURT: I see that you have an MBA and a master of
7 science. What specialty?

8 PROSPECTIVE JUROR: Master of science in information
9 systems and computer information and MBA was in general
11 : 40 10 business.

11 THE COURT: Okay. Thank you.

12 [REDACTED] you have been with Gallery Furniture
13 19 years. Is that correct?

14 PROSPECTIVE JUROR: That's correct.

11 : 40 15 THE COURT: It says down here that you got, what is
16 it, health and physical education, you got your degree in that.
17 Correct?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Has that been a while back?

11 : 41 20 PROSPECTIVE JUROR: Yes.

21 THE COURT: I guess --

22 PROSPECTIVE JUROR: I graduated in 1972.

23 THE COURT: Okay. No concept of an opioid problem at
24 that point as far as -- did you study any of that in school?

11 : 41 25 PROSPECTIVE JUROR: No.

11 : 41 1 THE COURT: Now I did see that you did serve on a
2 murder case jury. Correct?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Was a verdict reached? Not what it was,
11 : 41 5 but was a verdict reached?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Thank you.

8 [REDACTED]?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Let's see. You were on a case concerning
11 drug dealing, correct?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: How long ago was that?

14 PROSPECTIVE JUROR: About seven years ago.

15 THE COURT: Seven years ago. What court was it in?

16 PROSPECTIVE JUROR: It was in state court.

17 THE COURT: State, court district court? Or county
18 court? I will not go into too much detail.

19 Was a verdict reached in that case?

11 : 41 20 PROSPECTIVE JUROR: Yes, sir, it was.

21 THE COURT: Okay. Were you the presiding juror? Were
22 you the foreman of the juror?

23 PROSPECTIVE JUROR: No, I was not.

24 THE COURT: Okay. Thank you.

25 [REDACTED] I know you are going to come up and

11:42 1 visit with us.

2 PROSPECTIVE JUROR: No.

3 THE COURT: She says no, not me. Do you want to
4 visit? Let's see if we can find something to visit about.
11:42 5 University of Houston, Counseling, MED. What is that?

6 PROSPECTIVE JUROR: Master of education.

7 THE COURT: Of education. Okay. And you have been
8 with, what, HISD for 35 years?

9 PROSPECTIVE JUROR: I'm retired.

10 11:42 THE COURT: Okay. Thank you.

11 [REDACTED] ?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: You were on a criminal case down here.
14 You did serve on a criminal case. What sort of a criminal
11:42 15 case? Do you remember?

16 PROSPECTIVE JUROR: It was 25 years ago.

17 THE COURT: What did they charge the guy with?

18 PROSPECTIVE JUROR: I believe it was murder.

19 THE COURT: Okay. Was there -- I see you reached a
20 verdict. Were you the foreman of the jury?
11:42

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Okay. Thank you.

23 [REDACTED] I see we are going to visit with you
24 later. Okay. So we will keep moving.

25 [REDACTED] are you coming up later to visit with

11 : 43 1 us? No. Well, okay. Do you want to? I had to ask.

2 Let's see. What is CSA?

3 PROSPECTIVE JUROR: It's a customer service agent, but
4 I just got changed to account manager.

11 : 43 5 THE COURT: Okay. In what sort of a business?

6 PROSPECTIVE JUROR: Insurance broker.

7 THE COURT: You have somebody who was -- was it you
8 who were employed by the Department of Criminal Justice?
9 Somebody was a correctional officer and a parole officer?

11 : 43 10 PROSPECTIVE JUROR: My husband.

11 THE COURT: How long was he with them?

12 PROSPECTIVE JUROR: It was before we were married.
13 I'm not sure.

14 THE COURT: How long ago was that?

11 : 44 15 PROSPECTIVE JUROR: At least 13 years ago.

16 THE COURT: That you know of?

17 PROSPECTIVE JUROR: Yeah.

18 THE COURT: All right. Thank you.

19 [REDACTED]?

11 : 44 20 PROSPECTIVE JUROR: Yes.

21 THE COURT: I will tell you what. If you are coming
22 up to visit with me later, as I get to you, let me know because
23 I won't go into those areas.

24 Ballard Aluminum, is that the family -- Ballard
25 Aluminum, is that the family business?

11 : 44 1 PROSPECTIVE JUROR: Yes. My husband and I own it.

2 THE COURT: Let me ask you this: I see you got a
3 degree and studied sterile processing at HCC. What is that?

4 PROSPECTIVE JUROR: We sterilize surgical instruments.

11 : 44 5 THE COURT: Okay. And let's see. Anything to do
6 with -- what sort of -- do you go in the surgical suite and
7 consult with doctors or anything?

8 PROSPECTIVE JUROR: No, I didn't. Some areas did, but
9 my area, I didn't.

10 THE COURT: Okay. Thank you.

11 [REDACTED] what is VAM? Is that Veterans
12 Administration?

13 PROSPECTIVE JUROR: It's the company I work for.

14 THE COURT: What does it do? You are an engineer. I
15 see you got an ME. You got a mechanical engineering degree.
16 What do you?

17 PROSPECTIVE JUROR: I'm a mechanical engineer with VAM
18 U.S.A. We do oil and gas pipe connections.

19 THE COURT: I see you went to Columbia. How did you
20 get down here?

21 PROSPECTIVE JUROR: I'm from Houston originally.

22 THE COURT: So you went up to Columbia?

23 PROSPECTIVE JUROR: I went up to New York and didn't
24 like it.

25 THE COURT: I grew up in that area. I have a sign

11:45 1 that says, "I may not have been born here, but I got here as
2 quick as I could." Every time I see all that snow, I don't
3 miss that at all. But we do have some water problems down here
4 occasionally. It comes in uninvited.

11:45 5 [REDACTED] you are in human resources. What is
6 NOV?

7 PROSPECTIVE JUROR: National Oilwell Varco.

8 THE COURT: Oh, sure.

9 PROSPECTIVE JUROR: Oil and gas company.

11:45 10 THE COURT: And you have a bachelor's of
11 communication. You have been with them five years. Did you
12 work anywhere before that?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Whereabouts?

11:46 15 PROSPECTIVE JUROR: Apache Corporation, another oil
16 and gas company.

17 THE COURT: You were not impressed with Apache, I
18 guess?

19 PROSPECTIVE JUROR: No.

11:46 20 THE COURT: Thank you very much.

21 [REDACTED] Molina Healthcare, as an analyst,
22 what exactly do you?

23 PROSPECTIVE JUROR: I'm a knowledge management
24 analyst.

11:46 25 THE COURT: What is that?

11 : 46 1 PROSPECTIVE JUROR: I oversee the strategy and
2 structure and how we organize the information that we give to
3 our customer service agents.

11 : 46 4 THE COURT: Okay. And capital -- have you been a
5 witness in court? Yes, capital facility fee dispute. What was
6 that about?

7 PROSPECTIVE JUROR: A developer sued the city I worked
8 for because they paid a fee that they claimed nobody else paid.

9 THE COURT: All right. [REDACTED] software engineer.
11 : 46 10 Correct?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: You have a degree in mathematics and
13 psychology?

14 PROSPECTIVE JUROR: Yes.

11 : 47 15 THE COURT: Brother and father each worked for the
16 VMAC?

17 PROSPECTIVE JUROR: That's what I brought up earlier,
18 the VMAC.

19 THE COURT: I don't think we are calling you up later,
11 : 47 20 are we?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Did we decide?

23 PROSPECTIVE JUROR: No.

24 THE COURT: That is what?

11 : 47 25 PROSPECTIVE JUROR: Veterans Administration Medical

11:47 1 Center.

2 THE COURT: Are they all in an administrative
3 capacity?

4 PROSPECTIVE JUROR: That's right.

11:47 5 THE COURT: Okay. Thank you.

6 I'm on the second page here. That's encouraging.
7 You know what they all say -- I get some of these cases that
8 last years. They say, How do you handle a case like this? You
9 know how you handle it. It is like eating an elephant, one
11:47 10 bite at a time. You take one bite and before you know it, I'll
11 be done and then we will ask some questions and take a lunch
12 break.

13 So now, yes, sir, [REDACTED]?

14 PROSPECTIVE JUROR: Yes.

11:48 15 THE COURT: Yes, sir? What do you do for Halliburton
16 exactly?

17 PROSPECTIVE JUROR: I'm a technology manager. I
18 manage a group of about 30 people.

19 THE COURT: And you did serve in the Navy, correct,
11:48 20 the Swedish Navy?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: For a couple years?

23 PROSPECTIVE JUROR: Yeah.

24 THE COURT: What was your MOS -- your military
11:48 25 specialty?

11:48 1 PROSPECTIVE JUROR: Electrical engineering.

2 THE COURT: Electrical engineering. Okay. Thank you.

3 PROSPECTIVE JUROR: My son wrote a position paper on
4 opioid crisis.

11:48 5 THE COURT: Mark him down. We are going to get our
6 naval officer up there. Thank you for letting us know. We
7 might as well go into it.

8 Ms. Johnson, you are at the McGovern, what is
9 that, Memorial -- the museum? Isn't that the museum?

11:48 10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Are you the president?

12 PROSPECTIVE JUROR: I'm the president and CEO.

13 THE COURT: Is that the volunteer position or the
14 professional?

15 PROSPECTIVE JUROR: The professional.

16 THE COURT: So you are the COO, the chief operating
17 officer?

18 PROSPECTIVE JUROR: I'm the CEO.

19 THE COURT: And the CEO. Okay. What is your
11:49 20 background? Any background in medicine? I see that you have
21 some hospital administration? Is that it?

22 PROSPECTIVE JUROR: No.

23 THE COURT: What is U of H? Hospital?

24 PROSPECTIVE JUROR: Hospitality manager.

11:49 25 THE COURT: Ah, hospitality manager -- it ran out of

11:49 1 words. Okay. Hospitality manager. Is this the first medical
2 facility or the first medical-oriented facility that you have?

3 PROSPECTIVE JUROR: Yes. That's correct.

4 THE COURT: Does the opioid epidemic or that sort of
11:49 5 thing come up in your business?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. Thanks.

8 [REDACTED] Harris Healthcare System, correct?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: What is Harris Healthcare Systems?

11 PROSPECTIVE JUROR: It used to be Harris County --

12 THE COURT: It used to be the Harris County Hospital
13 District?

14 PROSPECTIVE JUROR: Yes.

11:50 15 THE COURT: You have been with them 22 years. What do
16 you do as an AIP analyst?

17 PROSPECTIVE JUROR: AP analyst.

18 THE COURT: What is that?

19 PROSPECTIVE JUROR: Pay the bills for the district.

11:50 20 THE COURT: Pay the bills?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: For the district. Do you get any hands-on
23 with any, sort of, patients or whatever?

24 PROSPECTIVE JUROR: No.

11:50 25 THE COURT: All right. Thank you.

11:50 1 [REDACTED] remember, if you are coming up
2 later, let me know. Marketing manager. What is SemaSys?

3 PROSPECTIVE JUROR: It's point of purchase display
4 company, retail merchandising, that kind of thing.

11:50 5 THE COURT: You have a BBA. All right. Thank you.

6 [REDACTED] you are coming up to visit a little
7 bit later? Right?

8 PROSPECTIVE JUROR: I think so.

9 THE COURT: Well, we need to write down Number 21. Is
11:50 10 she coming up later? Yes.

11 I see that you also have been a witness in court.
12 Correct?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: And we will call you up about that also.
11:51 15 Remind me everybody, if you would, make note of that, that is
16 one area I want to go into also.

17 Thank you. We will call you up in a little bit.

18 [REDACTED]?

19 PROSPECTIVE JUROR: Yes.

11:51 20 THE COURT: You are a respiratory therapist. You have
21 a child who is a respiratory therapist and another one who is
22 an attorney. Right?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Let's talk about the respiratory
11:51 25 therapist. What sort of practice does he or she have?

11 : 51 1 PROSPECTIVE JUROR: He's in California.

2 THE COURT: In California?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Does he get into anything with the opioids
11 : 51 5 as far as I know?

6 PROSPECTIVE JUROR: That I do not know.

7 THE COURT: Who is the attorney?

8 PROSPECTIVE JUROR: My daughter, one of my daughters.

9 THE COURT: Her name?

10 PROSPECTIVE JUROR: Allison.

11 THE COURT: What kind of an attorney is she, aside
12 from a good one?

13 PROSPECTIVE JUROR: Family practice.

14 THE COURT: Family practice. So she does a lot of
11 : 51 15 family law work?

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Divorce?

18 PROSPECTIVE JUROR: And things like that.

19 THE COURT: Does she work on her own or is she with a
11 : 52 20 firm?

21 PROSPECTIVE JUROR: No. On her own.

22 THE COURT: That's an interesting practice. At one
23 time, I was board certified in family law. It's an interesting
24 practice. You get a lot of calls at night though, which is
25 good. Thank you so much.

11 : 52 1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: [REDACTED] what is Entelligence, with
3 an E?

4 PROSPECTIVE JUROR: We do basically IT staffing.

11 : 52 5 THE COURT: IT staffing. But you have human resource
6 developer. Is that human resources or is that something
7 different?

8 PROSPECTIVE JUROR: It's basically the same thing.
9 That's what my degree was in.

10 THE COURT: Yeah. I understand that. You have been
11 with them less than a year. Before that, did you work outside
12 the home?

13 PROSPECTIVE JUROR: I was working for a different
14 staffing agency for about five years.

15 THE COURT: Okay. Thanks.

16 [REDACTED] NASA Space Center. Cost/price
17 analyst. What do you do? What exactly do you do?

18 PROSPECTIVE JUROR: I support a position with
19 proposals that will get into various government contracts,
20 station center, that kind of thing?

21 THE COURT: Do you do a lot of contract work?

22 PROSPECTIVE JUROR: Yeah. Just contract work.

23 THE COURT: Okay. Thank you.

24 [REDACTED] are we calling you up?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Your daughter is a nurse and your son is
2 an engineer. Let's talk about your daughter being a nurse.
3 What sort of nurse is she?

4 PROSPECTIVE JUROR: She actually hasn't started any
5 practice yet. She has got three little boys.

6 THE COURT: So she has a nursing degree, but she is
7 not working outside the home at this time?

8 PROSPECTIVE JUROR: That's correct.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What sort of nurse was she when she was
13 active?

14 PROSPECTIVE JUROR: She worked with her husband in the
15 office for a vascular surgeon and she also went to hospice at
16 the end of her career.

17 THE COURT: Okay. Aside from just where they work, do
18 you have any other personal knowledge as to any kind of drugs
19 or the opioid epidemic or anything through them?

20 || PROSPECTIVE JUROR: No, sir.

21 THE COURT: Okay. Thank you.

22 || [REDACTED] you are coming up later?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Not yet? I thought I had a whole bunch of
25 people. Maybe it is on the left over here. Procurement

11:54 1 specialist, Bellicum Pharmaceuticals. What sort of
2 pharmaceuticals do you work with?

3 PROSPECTIVE JUROR: It's a clinical stage-one cancer
4 research company.

11:54 5 THE COURT: Okay. And let's see. You got a
6 bachelor's of science in business, right, and also an MBA? But
7 it is nothing to do with the medical aspect?

8 PROSPECTIVE JUROR: Neither of my degrees, no.

9 THE COURT: Okay. Do you do anything concerning
11:54 10 prescribing drugs or drugs or so forth like that?

11 PROSPECTIVE JUROR: I do buy raw materials to
12 manufacture drugs for cancer patients.

13 THE COURT: That's it?

14 PROSPECTIVE JUROR: Yes, sir.

11:55 15 THE COURT: [REDACTED] I think we are going to call
16 you up. Accounting manager at Center Point Energy. Yes, we
17 will talk to you in a moment.

18 [REDACTED] Mustang Engineering, what sort of an
19 operation is that?

20 PROSPECTIVE JUROR: It does engineering.

21 THE COURT: What sort of engineering?

22 PROSPECTIVE JUROR: I don't know. I was an admin
23 secretary for all the administrative group. I never paid much
24 attention to that.

11:55 25 THE COURT: You got a, what is it, one child who is in

11:55 1 licensing for pharmacists?

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Who is that?

4 PROSPECTIVE JUROR: My daughter Brandy.

11:55 5 THE COURT: What is her degree in? I'm sure you paid
6 for it.

7 PROSPECTIVE JUROR: I know I did.

8 THE COURT: Yeah, I know about that.

9 PROSPECTIVE JUROR: I'm not sure. It has been too
11:55 10 many years ago.

11 THE COURT: What does she do right now?

12 PROSPECTIVE JUROR: She still works for the same
13 company, for the Pharmacy Board, and she has two children.

14 THE COURT: What does she do for the Pharmacy Board?

11:55 15 PROSPECTIVE JUROR: She was licensing the pharmacists.

16 THE COURT: Do you ever discuss that with her, what
17 goes into her decisions as to whether someone should be
18 licensed or what should be done in the business?

19 PROSPECTIVE JUROR: Years ago we did, but since the
11:56 20 grandkids came up, no.

21 THE COURT: Does she live here?

22 PROSPECTIVE JUROR: No. She lives in Austin, Obelia
23 area.

24 THE COURT: Have you discussed the opioid epidemic or
25 any problems concerning that with her?

11:56 1 PROSPECTIVE JUROR: She is very aware of it.

2 THE COURT: I'm talking about with you?

3 PROSPECTIVE JUROR: Oh, with me?

4 THE COURT: Yeah. Do you discuss that problem with
11:56 5 her at all?

6 PROSPECTIVE JUROR: With my daughter?

7 THE COURT: That's correct.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Aside from that, is there anything you
11:56 10 feel would prohibit you from being fair and impartial to these
11 folks, both sides, without having heard any of the evidence?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Thank you.

14 PROSPECTIVE JUROR: You're welcome.

11:56 15 THE COURT: [REDACTED] this says Panther Creek Pet
16 Clinic. Where is Panther Creek?

17 PROSPECTIVE JUROR: It's in The Woodlands.

18 THE COURT: You deal with things other than panthers?
19 You never can tell. I have been doing this for too long. I'm
20 telling you.

21 PROSPECTIVE JUROR: I manage two small animal
22 companion hospitals in The Woodlands.

23 THE COURT: Animal companion hospital, what does that
24 mean?

25 PROSPECTIVE JUROR: Dogs and cats.

11:57 1 THE COURT: You do it in the management area? Is that
2 correct?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Okay. Thank you so much.

11:57 5 By the way, you saw me make that comment. I have
6 learned all sorts of stuff in my years. In fact, we have had
7 people who have Ph.D.'s in bagging, Ph.D.'s in swimming pools.
8 I have had a master's degree in bus driving, all in major
9 cases, so everybody has a place.

11:57 10 In fact, I will visit you -- we will move on
11 quickly, but the reason why I'm such a believer in the jury
12 system is on that huge Stanford case, it ended up to be over
13 \$10 billion in financial fraud. We had a Ph.D. in physics
14 sitting right next to a woman who was a retired hairdresser in
15 a rural county. That's what the jury system is all about. It
16 is really is. I'm telling you, I always use that as an example
17 because I'm a firm believer in that and only when people come
18 from a cross section of the community can the system work.

19 With that, we are going to move on.

11:58 20 THE COURT REPORTER: Judge, can I move it over to that
21 side of the courtroom?

22 THE COURT: Everything now is computerized. As Mayra
23 takes down what is going on, the words themselves come up on
24 the screen so -- and we also can get transcripts -- it used to
25 take transcripts -- if the lawyers wanted daily copy in big

11:59 1 cases, either civil or criminal, they have to have a court
2 reporter come in for a half hour, take it, leave, go and
3 dictate it and get it typed up. Now a rough copy can be, what,
4 about 15, 20 minutes after a day. They can run a rough copy of
11:59 5 all the testimony. It may not have everything spelled
6 correctly. But, Counsel, if you want to, you can step around
7 here.

8 Okay. We are to Number 30. We're moving
9 quickly.

11:59 10 PROSPECTIVE JUROR: I wish.

11 11 THE COURT: [REDACTED]. Or should I say Reverend? I
12 know you are a minister also.

13 13 Okay. You work for Sweetwater Financial
14 Advisors? Correct?

12:00 15 PROSPECTIVE JUROR: Yes.

16 16 THE COURT: What did you do in that capacity?

17 17 PROSPECTIVE JUROR: Office manager.

18 18 THE COURT: What sort of business is that?

19 19 PROSPECTIVE JUROR: Financial advisor.

12:00 20 THE COURT: As far as your church service, what do you
21 do there, please?

22 22 PROSPECTIVE JUROR: I am the assistant pastor and then
23 I do counseling.

24 24 THE COURT: During your counseling, have you dealt
12:00 25 with parents or youngsters that have been affected by the

12:00 1 opioid crisis?

2 PROSPECTIVE JUROR: No. Drug addiction.

3 THE COURT: Drug addiction? What sort of drugs?

4 Cocaine? Marijuana? Heroin?

12:00 5 PROSPECTIVE JUROR: Marijuana.

6 THE COURT: Meth?

7 PROSPECTIVE JUROR: No. Meth yet. My son though is
8 meth addicted.

9 THE COURT: I will tell you what. Why don't we call
12:00 10 you up so we can visit? Number 30, we will call you up.

11 [REDACTED] what is that Smart Shop? What sort
12 of a business is that?

13 PROSPECTIVE JUROR: It's a grocery store.

14 THE COURT: You have been with them, what, one year?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Okay. The Northside High School, you went
17 up there. Did you take any specialization in high school?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Got a general degree. Is this the first
12:01 20 job outside of school or did you work somewhere else?

21 PROSPECTIVE JUROR: I used to work somewhere else. I
22 used to work at Kroger Company.

23 THE COURT: At Kroger?

24 PROSPECTIVE JUROR: In the warehouse.

12:01 25 THE COURT: In the warehouse. Okay. Thank you.

12 : 01 1 [REDACTED]?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: You left employer blank, but then you
4 wrote in "piano teacher." And you majored in music, correct?

12 : 01 5 PROSPECTIVE JUROR: It has been a long time.

6 THE COURT: You majored in what instrument?

7 PROSPECTIVE JUROR: Actually, I majored in vocal
8 performance.

9 THE COURT: Vocal performance. Have you ever sung
12 : 01 10 professionally?

11 PROSPECTIVE JUROR: I wanted to, but then I had kids.

12 THE COURT: I also wanted to play for the Brooklyn
13 Dodgers but never got there. I grew up in Brooklyn with the
14 Brooklyn Dodgers, even met Jackie Robinson as a kid. It is
15 really something else. I was so excited when the Astros
16 finally won. In '55, Brooklyn won its only World Series in
17 their history and then they moved to LA. That's a useless act.

18 Let's see you have a spouse that's -- your
19 husband is a pediatrician?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: We didn't say we would call you up?

22 Right?

23 PROSPECTIVE JUROR: No. They are kids. They don't
24 have chronic pain, I mean, from what he tells me.

12 : 02 25 THE COURT: Not yet. Not that they know of yet.

12 : 02 1 Let's put it that way.

2 PROSPECTIVE JUROR: They are kids.

3 THE COURT: Has he dealt with anything relative to the
4 pain management problem or concern that they have nowadays?

12 : 02 5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Thank you, ma'am.

7 [REDACTED] you are a pilot. What sort of plane
8 do you fly? Are you a private pilot?

9 PROSPECTIVE JUROR: It's a Gulfstream 550.

12 : 03 10 THE COURT: How long have you been in the pilot
11 business?

12 PROSPECTIVE JUROR: Forty-five years.

13 THE COURT: I see you were a captain in the U.S. Air
14 Force?

12 : 03 15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: What sort of planes did you fly in the Air
17 Force?

18 PROSPECTIVE JUROR: It is like a 707. It was a
19 reconnaissance aircraft, a four-engine jet.

20 THE COURT: Four-engine jet?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: The reason why I ask that, you may fly
23 them, but the Hercules -- you know what that is -- the C-130,
24 that's what I jumped out of in the military.

25 PROSPECTIVE JUROR: Oh, yeah.

12 : 03 1 THE COURT: People would say, You are nuts. They fly
2 the plane. I don't know why anyone would want to jump out of
3 them.

12 : 03 4 In jump school, it is a three-year course -- a
5 three-month course -- a three-week course. It gets shorter and
6 shorter. The first week, they separated the men from the boys.
7 The second week they separated the boys from the idiots. And
8 the third week, the idiots jump out of the airplanes. I don't
9 know if I have had any residual effect, but we always had full
12 : 04 10 respect because we used to get a briefing from the Air Force
11 every time before we went up.

12 12 We were in a -- you were a witness in court. Is
13 that a discrimination case, corporate discrimination?

14 14 PROSPECTIVE JUROR: Yes, sir, it was. Couple things:
15 My sister died of a drug overdose 10 years ago.

16 16 THE COURT: I think we probably ought to visit with
17 you.

18 18 PROSPECTIVE JUROR: A couple things --

19 19 THE COURT: If there is anything else, we can talk
20 about it when we get up there. It is the safest thing to do.
21 Thank you, sir.

22 22 [REDACTED]?

23 23 PROSPECTIVE JUROR: Yes.

24 24 THE COURT: What do you do with the City of Houston?

12 : 04 25 PROSPECTIVE JUROR: I work at the Houston Airport

12 : 04 1 Systems.

2 THE COURT: The Airport Systems?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Doing what, sir?

12 : 04 5 PROSPECTIVE JUROR: Communication.

6 THE COURT: You don't take care of the captain's
7 aircraft? You don't know?

8 PROSPECTIVE JUROR: If they have an emergency, we will
9 handle it on the ground.

12 : 05 10 THE COURT: All right. Thank you, sir.

11 [REDACTED] you are with, what is it, Dr. Pepper,
12 Snapple? Correct?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: I heard something on the radio this
15 morning. Did one of them buy the other? Is there some sort of
16 a merging?

17 PROSPECTIVE JUROR: There might have been a merger. I
18 don't know.

19 THE COURT: There was something about that on. What
12 : 05 20 was it? I'm not dreaming, right? Somebody is agreeing with
21 me?

22 PROSPECTIVE JUROR: One was bought out.

23 THE COURT: One bought out the other. Okay.

24 What do you do there, sir?

12 : 05 25 PROSPECTIVE JUROR: Reset specialist.

12:05 1 THE COURT: What specifically do you do?

2 PROSPECTIVE JUROR: I'm in charge of setting up, I
3 guess, new accounts that Dr. Pepper has and I set it according
4 to a certain diagram.

12:05 5 THE COURT: Okay. Thanks so much.

6 [REDACTED] -- remember, if you are coming up,
7 let me know. You have one child who is a nurse, and you are a
8 nurse yourself, correct?

9 PROSPECTIVE JUROR: No. I'm not a nurse.

12:06 10 THE COURT: HCC, Stephen F. Austin.

11 PROSPECTIVE JUROR: That's where I went to college,
12 but I did not finish.

13 THE COURT: Oh, okay. I see. And you have a daughter
14 who is a student nurse?

12:06 15 PROSPECTIVE JUROR: She is currently a -- she is a
16 nurse. She graduated.

17 THE COURT: At the VA Hospital?

18 PROSPECTIVE JUROR: No, sir. She worked at the VA but
19 she is a graduate. She has been working for six months now and
20 she works at Texas Children's Hospital.

21 THE COURT: What area is she assigned to?

22 PROSPECTIVE JUROR: Cardiovascular ICU.

23 THE COURT: Well, since you have a background in
24 nursing, and certainly your daughter, have you -- do you have
25 any opinions relative to the opioid problem that would affect

12:06 1 your ability to be fair and impartial in this case without
2 having heard any of the evidence?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Okay. Thank you.

12:06 5 PROSPECTIVE JUROR: You're welcome.

6 THE COURT: [REDACTED] Shell Exploration and
7 Production, what do you do? You say energy trading and
8 products. What do you trade?

9 PROSPECTIVE JUROR: I used to trade. Now I do
12:07 10 acquisitions and integration.

11 THE COURT: Integration, what does that mean?

12 PROSPECTIVE JUROR: So when we buy a company, I make
13 sure that they conform to the way that we have to manage them
14 at Shell.

12:07 15 THE COURT: All right. Thank you. I knew I had a
16 structural engineer here. [REDACTED] see what I'm talking
17 about? They wouldn't allow me to take that pole down.

18 PROSPECTIVE JUROR: I think that's a good idea.

19 THE COURT: Actually, you have a BSME. Your
20 bachelor's is in mechanical and then structural engineering, a
21 master of science in civil engineering?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Now, what is it? Government, somebody at
24 the Texas Attorney General's Office as an attorney. Who is
25 that?

12 : 07 1 PROSPECTIVE JUROR: My wife.

2 THE COURT: Wife. Okay. Is she still working there?

3 PROSPECTIVE JUROR: No. She worked there for about
4 nine months, I think.

12 : 08 5 THE COURT: What division was she assigned to?

6 PROSPECTIVE JUROR: I'm not even sure. I don't
7 remember.

8 THE COURT: Okay. Nothing relative to the criminal
9 matter or health matters as far as you know?

12 : 08 10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Thank you.

12 [REDACTED] Social Security Administration.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What area specifically do you work in?

12 : 08 15 PROSPECTIVE JUROR: Supplemental Security Income, the
16 SSI.

17 THE COURT: What about speech pathology? Do you have
18 a child in speech pathology?

19 PROSPECTIVE JUROR: Yes. I have a daughter.

12 : 08 20 THE COURT: It is sort of in health care. Does she
21 have her own practice or does she practice --

22 PROSPECTIVE JUROR: She works for an agency in Austin.

23 THE COURT: Also, I see you served on a criminal case,
24 a robbery and an assault and a verdict was reached. Were you
25 the presiding juror?

12 : 08 1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Okay. Thank you.

3 [REDACTED] you are an attorney, sir?

4 PROSPECTIVE JUROR: I am, Your Honor.

12 : 08 5 THE COURT: Okay. What type of a practice do you
6 have?

7 PROSPECTIVE JUROR: We mostly do hail insurance
8 litigation.

9 THE COURT: What?

10 PROSPECTIVE JUROR: Hail insurance litigation.

11 THE COURT: You graduated, what is it, St. Mary's?
12 What year?

13 PROSPECTIVE JUROR: 2003 from law school.

14 THE COURT: 2003 from law school.

12 : 09 15 PROSPECTIVE JUROR: And grad school.

16 THE COURT: So you don't do any criminal law at all?

17 PROSPECTIVE JUROR: No, Your Honor. I did when I was
18 a baby lawyer but not now.

19 THE COURT: What sort of practice did you have when
12 : 09 20 you first started out?

21 PROSPECTIVE JUROR: Anything that walked in the door,
22 Your Honor.

23 THE COURT: I remember those days. Thank you, sir.

24 Let's see, [REDACTED] you are also an attorney?

12 : 09 25 PROSPECTIVE JUROR: Yes, sir.

12 : 0 9 1 THE COURT: The firm that you are with is?

2 PROSPECTIVE JUROR: Ware Jackson.

3 THE COURT: You have been with them -- is that 11
4 years? Did you practice in another firm prior to that?

12 : 0 9 5 PROSPECTIVE JUROR: I think I have been with them
6 about seven and four, before that at Cozen O'Connor.

7 THE COURT: What sort of practice do you have?

8 PROSPECTIVE JUROR: General litigation.

9 THE COURT: General litigation. Do you do any
12 : 0 9 10 criminal law work?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Do you do any healthcare work with
13 providers or with any insurance companies, to the best of your
14 knowledge?

12 : 1 0 15 PROSPECTIVE JUROR: Not that I can think of.

16 THE COURT: Okay. Thank you.

17 [REDACTED] we are going to talk to you later,
18 correct?

19 PROSPECTIVE JUROR: Yes.

12 : 1 0 20 THE COURT: Let me see if there is anything. You have
21 some experience as a respiratory therapist. You have had some
22 experience there? Is that correct?

23 PROSPECTIVE JUROR: On mine?

24 THE COURT: Yes.

12 : 1 0 25 PROSPECTIVE JUROR: Yes.

12:10 1 THE COURT: We will talk to you.

2 [REDACTED] what sort of an operation is Triple
3 Tap Ventures?

4 PROSPECTIVE JUROR: We manage the Alamo Draft House.

12:10 5 THE COURT: How many of those restaurants do you have?

6 PROSPECTIVE JUROR: Three.

7 THE COURT: Are they all local here?

8 PROSPECTIVE JUROR: Lubbock, El Paso and Houston.

9 THE COURT: All right. Thank you.

12:11 10 [REDACTED] yes, sir? Chevron Trading, what do
11 you do in trading?

12 PROSPECTIVE JUROR: I was both natural gas and later
13 on crude oil, domestic and foreign.

14 THE COURT: You had some interesting -- you were on a
15 traffic case, including bail jumping or two separate cases.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: It was two separate cases?

18 PROSPECTIVE JUROR: There was two separate cases.

19 THE COURT: On either one of those, were you the
12:11 20 foreman of the jury?

21 PROSPECTIVE JUROR: I was.

22 THE COURT: You were in both of them or one of them?

23 PROSPECTIVE JUROR: No. On the -- it was on the bail
24 jumping.

12:11 25 THE COURT: Okay. Thank you.

12:11 1 [REDACTED] you are a retired teacher. What
2 subject did you teach?

3 PROSPECTIVE JUROR: English.

4 THE COURT: Whereabouts?

12:11 5 PROSPECTIVE JUROR: In Toledo, Ohio.

6 THE COURT: Your son is a diplomat, correct, with the
7 State Department?

8 PROSPECTIVE JUROR: He was, but he just quit his -- he
9 is an expert on counterterrorism and sanctions, and he worked
12:12 10 between the White House and the UN. But he quit his job two
11 weeks ago and now -- he just started Monday -- he is the vice
12 president of a company called Pharma.

13 THE COURT: Is that a drug company?

14 PROSPECTIVE JUROR: It's a conglomeration of drug
12:12 15 companies, and his job is to advocate for intellectual property
16 at the UN.

17 THE COURT: Intellectual property at the UN. Does he
18 do anything as far as you know with anything concerning the
19 opioids?

12:12 20 PROSPECTIVE JUROR: No, no, no. It's general -- the
21 possession -- the importance of intellectual property.

22 THE COURT: What sort of degree does he have?

23 PROSPECTIVE JUROR: He has a master's from the Woodrow
24 Wilson School.

12:12 25 THE COURT: Princeton. What about undergraduate?

12 : 12 1 PROSPECTIVE JUROR: Ohio State.

2 THE COURT: Okay. Thank you so much. [REDACTED]

3 are we going to visit later?

4 PROSPECTIVE JUROR: No, I don't think so.

12 : 12 5 THE COURT: I talked to you a lot here.

6 Medical education, is there anything else you
7 need to talk to us about?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: Have we covered everything about your
12 : 13 10 medical education? And you have got a bachelor's degree in
11 biomedical science. Does that any of that have to do with
12 drugs, opioids, any kind of narcotics, any kind of -- you tell
13 me.

14 PROSPECTIVE JUROR: As a nurse, I have administered
12 : 13 15 them.

16 THE COURT: You administered them. Okay. How long
17 were you a practicing nurse?

18 PROSPECTIVE JUROR: I just quit hospital in November.

19 THE COURT: Okay. What sort of -- what was your
12 : 13 20 specialty, generally?

21 PROSPECTIVE JUROR: Emergency.

22 THE COURT: Did you see people coming in with
23 overdoses?

24 PROSPECTIVE JUROR: Yes, sir.

12 : 13 25 THE COURT: Did you treat them?

12 : 13 1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Is there anything about that that would
3 prohibit you from being fair and impartial in this case without
4 having heard any of the evidence?

12 : 13 5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Okay. Thank you.

7 [REDACTED] you are a network engineer for Rowan.
8 What kind of a company is Rowan?

9 PROSPECTIVE JUROR: Oil and gas.

12 : 14 10 THE COURT: Oil and gas. You have been with them 12
11 years. Were you employed at another company before that?

12 PROSPECTIVE JUROR: Cisco Systems.

13 THE COURT: Okay. And it says, what is it, you have a
14 bachelor's of science of, what is it, range management?

12 : 14 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What is that, sir?

17 PROSPECTIVE JUROR: Maintaining a safari park.

18 THE COURT: Pardon me?

19 PROSPECTIVE JUROR: Safari park, like a nature
12 : 14 20 reserve.

21 THE COURT: Oh, okay. It looks like you had two
22 different interesting careers.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Ladies and gentlemen, I'm going to give
12 : 14 25 you a schedule of what we will be doing in just a moment. I'm

12:14 1 going up and I'm going to go back to my desk and go talk to the
2 attorneys, and we will set a schedule.

3 Okay. Thank you so much. We have moved along
4 very quickly for this size of a panel.

12:16 5 (At the bench)

6 THE COURT: What do you think we ought to do? Should
7 we let them go except for the people I want to talk to and give
8 them general instructions about not talking at the lunch break
9 and so forth, and we will give them enough time that it is not
12:16 10 going to penalize the people that have to come up and talk with
11 us? Anybody have a problem with that?

12 MR. ARMSTRONG: No.

13 THE COURT: Anything else we need to go into?

14 MR. LEWIS: I think we had one person that didn't
12:16 15 answer the question.

16 THE COURT: We'll get to that one in a moment. Who
17 was that?

18 While we are doing it, let's see if I have a
19 question and I want to call somebody up that I didn't
20 designate.

21 MR. LEWIS: On Juror 41, I had a question. He
22 indicated that he or someone he knew had been treated for
23 chronic pain for 12 years and taking medication for that, but
24 he never indicated what meds.

12:17 25 THE COURT: Okay. We will call him up for that one

Jury Selection

12:17 1 quick question. We have got to move quickly here.

2 Step down, gentlemen.

3 (Open court)

4 THE COURT: We are going to do something unique, here.

12:17 5 By the way, we do need to see [REDACTED] also. So put yourself
6 down. We need to talk with you just briefly about one thing
7 that came up. I just talked to the attorneys. That's the only
8 thing additional we have.

9 Ellen, do you have a list of numbers?

12:17 10 I'm going to give you -- we are going to take a
11 lunch break at this time. It is going to be a little longer
12 than usual because this is what we are going to do: We are
13 going to announce the people who I need to speak to. We are
14 going to move quickly, okay, but you are coming up and visiting
15 up here. And we will do that during the lunch break.

16 The rest of you can go and we will give plenty of
17 time for even the ones coming up here to take a full lunch
18 break. I think that is the fairest thing to do rather than
19 having all of you sit there while we talk to one at a time.

12:18 20 We will read off the numbers in a moment as to
21 who we need to talk to. I assure you it is going to go quick.
22 It went quickly down the line, but the attorneys may have a
23 question or two.

24 I'm going to go give you some general
12:18 25 instructions. We are going to take a lunch break. During the

Jury Selection

12:18 1 lunch break, you are not to discuss this case with anyone,
2 including with each other. When you get back here after the
3 lunch break, we will announce who is on the jury and we are
4 going to get right --

12:18 5 *(Off the record discussion)*

6 THE COURT: Okay. So when we come back here, we will
7 start the case, opening statements and get right into the
8 evidence on this case, so we are going to move pretty quickly.
9 We have everybody who raised their hands or whatever, had a
12:19 10 concern. I'm going to ask you one last question, keeping in
11 mind this is an extremely short case for federal court, if
12 there is anything -- hang on, behind the pole, where I can see
13 everybody. Okay. Wait a second.

14 Now, that's why I try to sit on an angle. If
12:19 15 there is anything else I haven't asked or hasn't been brought
16 up that you think would affect your ability to sit on this
17 jury, please raise your hand. Okay.

18 Now, let's explain what will happen. After we
19 get everybody's information, after we talk to everybody -- we
20 have your names on sheets. Okay. The government has the same
21 names as the defendants. Once -- they can make strikes for
22 whatever reason they want. My case manager will put both the
23 government sheet and the defense sheet side by side. She will
24 go down it with a ruler and the first 14 names that have no
25 strike on the government sheet or the defense sheet forms the

Jury Selection

12:20 1 jury.

2 So if you go home and tell somebody that you have
3 been selected to serve on a jury, no, it's a matter of
4 elimination, not a matter of selection. So they wanted
12:20 5 somebody off worse than having you on. Sorry for that. You
6 can say you have been selected, but that's how the system
7 works; state court, federal court, civil and criminal.

8 So we are going to take a break, but let me tell
9 you that you are not excused from jury duty. Why do I say
12:20 10 that? In my experience -- for instance, a voir dire like
11 this -- we have fellow attorneys that practice in both. A voir
12 dire like this can take a whole day or maybe longer on the
13 state system.

14 We started at what time, Ellen? 10:00, no,
12:21 15 10:15? And what time is it now? It is 12:15, so we moved
16 along pretty quickly. But in any event, you are not excused
17 from jury duty.

18 In state court, I was doing mostly civil cases.
19 We took a break because they went on and on because the judge
12:21 20 has got to let you do more voir dire in state court. One juror
21 went outside and said he had enough of this damn jury duty. He
22 went to work. We knew where he worked. And there we had
23 sheriffs instead of marshals. We have U.S. Marshals here in
24 this case. But, anyhow, we called his name. He wasn't there.
25 Now, we knew where he worked. Some of you that may remember a

Jury Selection

12:21 1 few of the, shall we say, more senior members of the panel,
2 when I was down in state court, closer to Allen's Landing -- if
3 you go down where the train is now on Main Street, there were
4 two types of stores basically in the old days down there. You
5 had, what is it, you had shoe stores and pawn shops, P-A-W-N.
6 That's what you had basically. Why do I spell pawn out? I had
7 been on the federal court about 10 years ago and one of the
8 court reporters came and said, "When you give that talk to the
9 jury about pawnshops, how do you spell that?" Oh, my God, all
12:22 10 of the transcripts going up to the circuit had P-O-R-N on it,
11 so I spell it out. But, anyhow, he was a salesman there, so I
12 told the sheriff, I told the deputies, Go out and get him.
13 Give him the full business with the raid jackets. They went
14 out with the sirens going and the lights. They pull up in
12:22 15 front of the shoe store, and he is fitting a woman with a pair
16 of shoes. They go and they nail him, they cuff him and they
17 bring them back. Now he comes right back in front of the same
18 panel because the voir dire kept going on, and they knew he had
19 some money in his pocket. I sentenced him -- I held him in
12:23 20 contempt and I said, "I sentence you to a \$100 fine and three
21 days in the county jail." Oh, boy, I had his attention,
22 together with the other members of the jury, of course. But we
23 knew he had the money, so he went down and paid it and they
24 brought him back up. I gave him three days in the jail. But
12:23 25 as an alternative, for the next seven business days, at 9:00

Jury Selection

12:23 1 a.m. and at 12:00 noon to report to that central jury room over
2 there and listen to those juror lectures over and over again.

12:23 3 If you have been on state jury duty, for the last
4 20 years, at least, they use a videotape. But back then, it
5 was our opportunity, if we were the jury judge, to visit
6 with 400 jurors in the morning and 400 in the afternoon. And
7 these were all voters. So you would get a combination of
8 orientation and campaign lecture. So he listened to that
9 for 14 times. I know we won't have any problem here.

12:23 10 The only other problem I had, it was a gorgeous
11 day out and one juror was missing when we came back. I talked
12 to everybody else. They saw him in the tunnel, and so I sent
13 the marshals out to look for the guy. Make a long story short,
14 they found him dead asleep in the sun out in Tranquility Park.
12:24 15 Those are the two problems. I know we won't have that here.

16 Those of you not familiar with the federal area,
17 we have a really good cafeteria on the first floor. If you
18 want to go outside for your lunch, you go across Smith Street
19 and anything on the street, but you go into the lobby of the
20 Bank of America building. It's that red brick building with
21 kind of the gothic spires on it. There is an escalator going
22 down, and you look up and there is the entrance to the whole
23 downtown tunnel system right there.

24 Now, I want to talk to my case manager and the
25 attorneys for about 30 seconds to determine how much time we

Jury Selection

1 need and how much time to give you for lunch and not to
2 prejudice the other folks that are going to have to wait around
3 a little bit.

4 Okay. Ellen, gentlemen, come on up. Off the
12:25 record.

6 *(Off the record discussion)*

7 THE COURT: Ladies and gentlemen, these are the
8 folks -- check your numbers, Number 10 included. You have got
9 your number and check these numbers. These are the ones we
12:26 will have to talk to just briefly after everybody else leaves.

11 Go on.

12 Ellen, what numbers?

13 THE CASE MANAGER: Juror Number 3.

14 THE COURT: If you would, raise your hand at the time.

12:26 15 THE CASE MANAGER: Juror Number 10, 17, 21, 26, 27,
16 30, 33, 39, 41, 42, 43, Number 12 and Number 37.

17 THE COURT: Okay. We are going to take you in
18 sequence. Now, those of you, we are going to take a break
19 which is longer than usual. I don't want you having to wait
20 outside. And, keep in mind, the lawyers and the staff have to
21 take a break also. I assure you, once we take the lunch break,
22 you will come back in, we will determine who is on the jury at
23 that time. We will have all the strikes made and so we will
24 proceed real quick when you get back in. So we are going to
25 ask the folks who raised their hands to remain in the

Jury Selection

12:27 1 courtroom. It sounds like a long time, but the attorneys are
2 going to have to make their strikes and do everything before
3 you get back up. Then Ellen has to arrange all the paperwork.
4 It is going to be a little longer than usual, but we need to
12:27 5 hear each of you up here, the questions we have or whatever.
6 So I apologize. No break is even going to come close. Usually
7 the lunch break is an hour and a quarter, which allows you to
8 get out for lunch and to go through security back and forth.
9 We will take a little bit longer because I have so many fellow
12:28 10 jurors that have to come up and then they need to take a break.

11 So we are going to get back in -- it is now
12 12:30. We are going to ask the jurors to be back outside this
13 courtroom ready to be re-seated at 2:30. We are not going to
14 be goofing off during that time. We are going to be talking to
12:28 15 jurors. We are going to be making the strikes, getting all the
16 paperwork done. I just don't want you to get back and have all
17 of you at that time waiting in the hallway until we get it
18 done. I assure you after that you are not going to have that
19 long.

20 I will say this also. Since it is a timing
21 order, whenever jurors will go into the jury room, we have to
22 talk about something, the clock is on. I make notes with each
23 witness, and I also write in red what goes on when you are out
24 in the jury room, when you are out of the courtroom, so later
12:29 25 on I come visit with you and tell you what went on.

Jury Selection

12:29 1 I apologize for the length of it. Thank you for
2 your cooperation. We couldn't do it without you.

12:29 3 So, aside from those individuals who we need to
4 talk to, everybody please be back outside this room at 2:30.
5 We will see you at that time, and we are going to get right
6 into the other jurors as soon as they leave.

7 *(At the bench)*

12:29 8 THE COURT: Why don't you come on up here? Ellen will
9 take them in numerical order. Okay? What we are going to do,
10 gentlemen, we are going to have the jurors come up here. They
11 will step in that corner. They will come up here and then we
12 will come forward after that. But come on up for now.

13 Number 3, is this the one that raised her hand
14 late or not?

12:30 15 MR. ARMSTRONG: This is the juror who raised her
16 hand --

17 THE COURT: Hold it a second. I think we have another
18 customer coming up. Have we got one more?

19 Step back a little bit, but when they come up
20 here, that's the microphone.

21 What is this one?

22 MR. ARMSTRONG: Your Honor, this is the juror who
23 raised her hand about the opioid epidemic. She says she has an
24 issue.

12:30 25 THE COURT: An issue. Okay.

Jury Selection

12 : 30 1 (Open court)

2 THE COURT: Ms. Brown, please, Number 3.

3 (At the bench)

4 MR. LEWIS: She also mentioned that she has a relative
12 : 30 5 on parole.

6 (Open court)

7 THE COURT: We are going to take people in numerical
8 order. If anybody has to use the facilities, you are welcome
9 to do so, but we need the lower numbers to remain here so we
12 : 31 10 can get right in sequence.

11 (Prospective Juror 3 approached the bench)

12 (At the bench)

13 THE COURT: Yes, ma'am? You said you had some sort of
14 a concern and you wanted to discuss the opioid epidemic.

15 PROSPECTIVE JUROR: Right.

16 THE COURT: This is your microphone. Step back about
17 a half a foot.

18 Counsel, come on in around this way.

19 Yes, ma'am?

12 : 31 20 PROSPECTIVE JUROR: My ex-son-in-law, he has abused
21 hydrocodone. My daughter was on hydrocodone, managing some
22 disease, Crohn's disease, along with rheumatoid arthritis, and
23 she was taking some injection type things. Bottom line is that
24 he stole it; he would take it from her.

25 THE COURT: You have a concern about being fair and

Jury Selection

12 : 31 1 impartial on this kind of a case?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Any questions?

4 MR. ARMSTRONG: No.

12 : 32 5 MR. LEWIS: No questions.

6 MR. WILLIAMS: No questions.

7 THE COURT: Thank you, ma'am. You are free to leave
8 and come back at 2:30.

9 *(Prospective Juror Number 3 departed the bench)*

12 : 32 10 *(At the bench)*

11 THE COURT: Do we have any challenges?

12 MR. ARMSTRONG: The United States makes a challenge
13 for cause.

14 MR. WILLIAMS: No objection.

12 : 32 15 THE COURT: Move in. I don't want them to see me with
16 a pen. Because if they see me with a pen, I will end up with a
17 run on the panel.

18 Number 3 is struck for cause. Correct?

19 MR. ARMSTRONG: Correct.

12 : 32 20 MR. WILLIAMS: Correct.

21 THE COURT: Next one, Ellen?

22 THE CASE MANAGER: Number 10?

23 THE COURT: What is Number 10?

24 THE CASE MANAGER: Wife is addicted to oxycodone.

12 : 32 25 *(Open court)*

Jury Selection

12 : 32 1 THE COURT: Come on up, sir.

2 (*Prospective Juror 10 approached the bench*)

3 (*At the bench*)

4 THE COURT: What was it that you wanted to visit with
12 : 33 5 us about?

6 PROSPECTIVE JUROR: Well, my former wife had
7 rheumatoid arthritis and she is also a medical doctor. She did
8 a pain survey in Arizona. She was a radiation oncologist. She
9 went to Sloan Kettering Pain Clinic in New York City, but
12 : 33 10 eventually, you know, she died, passed away. But I think she
11 was addicted at the end to her own medical condition.

12 THE COURT: Okay. Questions?

13 MR. ARMSTRONG: Did that experience -- would anything
14 about that experience give you difficulty being fair and
12 : 33 15 impartial in this case?

16 PROSPECTIVE JUROR: I think I could be fair and
17 impartial, but it has obviously impacted me.

18 MR. WILLIAMS: I don't mean to be pushy with that, but
19 we need to be clear.

20 THE COURT: I can't hear you.

21 MR. WILLIAMS: I don't mean to be pushy about my
22 question, but we need you to be either one side or the other.
23 Either you can or you can't.

24 THE COURT: Do you have any problem in this kind of a
12 : 33 25 case?

Jury Selection

12 : 34 1 MR. WILLIAMS: In this kind of a case when you know
2 there is going to be -- you heard about the facts --

12 : 34 3 PROSPECTIVE JUROR: It's one of these things that I
4 can be fair and impartial for everything, you know, so I'm
5 going to tell you I think I can be fair and impartial, but I
6 want to be honest with you guys about my experiences and my
7 background.

8 THE COURT: Any further questions?

9 No further questions. Thank you, sir. You may
12 : 34 10 step down.

11 *(Prospective Juror Number 10 departed the bench)*

12 THE COURT: Do we have any challenges on Number 10?

13 MR. ARMSTRONG: No, Judge.

14 MR. WILLIAMS: Challenge for cause, Judge.

15 THE COURT: Why? Just get the reason in the record.

16 MR. WILLIAMS: Judge, I believe he is saying he thinks
17 he can be fair and impartial, but he has had experience with
18 opioid use directly with his wife that has caused --

19 THE COURT: And even during his last statement, there
20 was a "but."

21 Move in closer, please. This is number what?

22 MR. ARMSTRONG: Number 10.

23 THE COURT: Number 10 is struck for cause.

24 Next one?

12 : 35 25 *(Open court)*

Jury Selection

12 : 35 1 THE COURT: Number 12?

2 (*Prospective Juror 12 approached the bench*)

3 (*At the bench*)

4 PROSPECTIVE JUROR: Mine has nothing to do with
12 : 35 5 opioid, but it has to do with the way I answered the question
6 on my application.

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: I guess -- I was arrested, so I
9 guess I was unclear about the deferred adjudication.

10 THE COURT: Sure. How long ago?

11 PROSPECTIVE JUROR: 1990, '91.

12 THE COURT: For what?

13 PROSPECTIVE JUROR: Shoplifting.

14 THE COURT: That was misdemeanor court?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And you served what? Deferred
17 adjudication?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Any questions?

12 : 35 20 MR. ARMSTRONG: Do you think the prosecutors treated
21 you fairly or unfairly in that case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: They didn't treat fairly?

24 PROSPECTIVE JUROR: I thought you said unfairly. They
12 : 35 25 treated me fairly.

Jury Selection

12 : 35 1 THE COURT: Any questions?

2 MR. WILLIAMS: Is there anything about that experience
3 that would cause you to be biased for one side or the other in
4 sitting on this particular jury?

12 : 35 5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you, ma'am.

7 PROSPECTIVE JUROR: Thank you.

8 *(Prospective Juror Number 12 departed the bench)*

9 THE COURT: Any challenge on Number 12?

12 : 36 10 MR. ARMSTRONG: No.

11 MR. WILLIAMS: No, Judge.

12 THE COURT: Who is next, Ellen?

13 THE CASE MANAGER: Number 17.

14 *(Open court)*

12 : 36 15 THE COURT: Number 17, we are not ready. We have got
16 to find your sheet in here.

17 *(Pause)*

18 THE COURT: Now, come on up, sir.

19 *(Prospective Juror 17 approached the bench)*

12 : 36 20 *(At the bench)*

21 THE COURT: You said that -- I believe your son wrote
22 a paper.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: What school?

12 : 36 25 PROSPECTIVE JUROR: So my son is 13. He is going to

Jury Selection

12 : 36 1 Beckendorff Junior High, but my sister-in-law, she is a family
2 physician in Malaysia and she is also setting policy and things
3 like that. So we did a lot of interviewing with him on how she
4 is trying to change the policy in Malaysia for this. And she
12 : 37 5 is also coordinating for the doctors in Malaysia, so she has
6 done a lot of work and it is something we discussed quite a bit
7 about this.

8 THE COURT: What was your son -- you said in junior
9 high school?

12 : 37 10 PROSPECTIVE JUROR: Yes.

11 THE COURT: What grade did he get on it?

12 PROSPECTIVE JUROR: He got a high grade. He did a
13 video on it and a paper on it.

14 THE COURT: Was it about the opioid project?

12 : 37 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Questions?

17 MR. ARMSTRONG: What was your son's position on the
18 opioid problem?

19 PROSPECTIVE JUROR: He was -- my sister in law's
12 : 37 20 position is really strong about the problem and they are trying
21 to change that. That was the basis of his paper.

22 MR. ARMSTRONG: During that process, did you learn
23 anything that would cause you or lead you to not be fair or
24 impartial in this case?

12 : 37 25 PROSPECTIVE JUROR: I guess I learned more than I want

Jury Selection

12 : 37 1 to know about it, but it is definitely a problem as I see it.

2 THE COURT: Questions?

3 MR. LEWIS: Let me be clear. You say your son's
4 position was they were against the use of opioids?

12 : 38 5 PROSPECTIVE JUROR: Yes. Use or the way that it was
6 easily available to people. That was part of what they want to
7 change in Malaysia.

8 MR. LEWIS: Do you think your son's position would
9 also reflect your position?

12 : 38 10 PROSPECTIVE JUROR: I helped him on his paper with
11 regard to his position.

12 MR. ARMSTRONG: That was in Malaysia, not the United
13 States?

14 PROSPECTIVE JUROR: Right.

12 : 38 15 THE COURT: Thank you.

16 *(Prospective Juror Number 17 departed the bench)*

17 THE COURT: Do we have a challenge on Number 17?

18 MR. WILLIAMS: Yes.

19 THE COURT: On what grounds?

12 : 38 20 MR. LEWIS: On the grounds that he has a
21 predisposition regarding his position --

22 THE COURT: Which he did say.

23 Anything further from the government?

24 MR. ARMSTRONG: Nothing further.

12 : 38 25 THE COURT: This is Number 17. Okay. Number 17 is

Jury Selection

12 : 38 1 struck for cause.

2 Who is next?

3 THE CASE MANAGER: Number 21.

4 (Open court)

12 : 39 5 THE COURT: Come on up, ma'am, Number 21.

6 (Prospective Juror 21 approached the bench)

7 (At the bench)

8 THE COURT: Yes, ma'am. Right there is your
9 microphone. Yes? What is your concern?

12 : 39 10 PROSPECTIVE JUROR: Oh, you said something about me
11 testifying in court, and I had a cousin whose son died from
12 heroin overdose.

13 THE COURT: Questions? Follow up?

14 MR. ARMSTRONG: Just to be clear, have you been
12 : 39 15 treated for chronic pain yourself?

16 PROSPECTIVE JUROR: Oh, yes, I did.

17 MR. ARMSTRONG: And what was your experience in that?

18 PROSPECTIVE JUROR: I took medicine and I had some
19 injections and I got off the medicine.

20 MR. ARMSTRONG: What medicines were you taking?

21 PROSPECTIVE JUROR: Tramadol and there was a muscle
22 relaxer. I can't remember what the name of it was.

23 MR. ARMSTRONG: Would your experience taking those
24 medications lead you to not be fair and impartial in this case?

12 : 40 25 PROSPECTIVE JUROR: No, sir, it wouldn't.

Jury Selection

12 : 40 1 THE COURT: Could you be fair?

2 PROSPECTIVE JUROR: I could be fair.

3 THE COURT: Okay. Questions?

4 MR. LEWIS: Do you believe that the medications that
12 : 40 5 you were prescribed by the doctor were indicated for your
6 chronic pain conditions?

7 PROSPECTIVE JUROR: Say that again.

8 MR. LEWIS: Do you believe that the medications that
9 were prescribed for your chronic pain symptoms were
12 : 40 10 indicated -- they should have been used by the doctor that was
11 treating you?

12 PROSPECTIVE JUROR: Yes. It was the correct
13 medication, yes.

14 THE COURT: Thank you, ma'am. You may step down.

12 : 40 15 *(Prospective Juror Number 21 departed the bench)*

16 THE COURT: Number 21, any challenge?

17 MR. HELFMEYER: Your Honor, she also mentioned that
18 she testified against her doctor in an insurance fraud case.
19 Did the Court want to inquire into that?

12 : 40 20 THE COURT: Yeah.

21 *(Open court)*

22 THE COURT: Ma'am, one more question. Like Columbo,
23 you know one more thing.

24 *(Prospective Juror 21 re-approached the bench)*

25 *(At the bench)*

Jury Selection

12 : 41 1 THE COURT: I see here that you were a witness in
2 2 court. Is that correct?

3 3 PROSPECTIVE JUROR: Yes, sir.

4 4 THE COURT: What was that about?

12 : 41 5 PROSPECTIVE JUROR: It was Interferon, and he was -- I
6 6 don't know all the charges, but he was giving double dosages of
7 7 Interferon to his patients. So I testified that I was there to
8 8 get those treatments, and I think there was some, like, mail
9 9 fraud. I can't remember. He also put a hit out on an FBI
10 10 agent.

11 11 THE COURT: Very nice doctor.

12 12 PROSPECTIVE JUROR: That was like a real complicated
13 13 deal.

12 : 41 14 THE COURT: Anything about that or the medical
15 15 profession that would prohibit you from being fair and
16 16 impartial in this case without having heard any of the
17 17 evidence?

18 18 PROSPECTIVE JUROR: No, sir, it wouldn't.

19 19 THE COURT: Anything further?

12 : 41 20 MR. LEWIS: No, Your Honor.

21 21 THE COURT: Thank you, ma'am. Sorry. Now you can
22 22 head out the door.

23 23 *(Prospective Juror Number 21 departed the bench)*

24 24 THE COURT: Anything further on this lady?

12 : 41 25 THE CASE MANAGER: Number 23 has a work trip.

Jury Selection

12 : 42 1 (Open court)

2 THE COURT: [REDACTED]?

3 (Prospective Juror 23 approached the bench)

4 (At the bench)

12 : 42 5 THE COURT: There is your microphone. What is your
6 concern?

7 PROSPECTIVE JUROR: So next Wednesday --

8 THE COURT: This Wednesday?

12 : 42 9 PROSPECTIVE JUROR: Not this coming Wednesday, a week
10 from Wednesday, I have a work trip that I can't reschedule.

11 THE COURT: Where are you going?

12 PROSPECTIVE JUROR: To California, Sunnyvale.

13 THE COURT: What is it about?

14 PROSPECTIVE JUROR: It's meeting with the director
15 over the PS team for one of the regions that I support.

16 THE COURT: What is PS team?

17 PROSPECTIVE JUROR: Professional services. I'm an
18 account manager, so my account is with Med Op, so we have
19 quarterly meetings where we meet with the directors. And that
20 one is scheduled for that time.

12 : 42 21 THE COURT: If this goes into next week, you have a
22 problem?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Question?

12 : 42 25 MR. ARMSTRONG: No questions.

Jury Selection

12 : 42 1 THE COURT: Any questions?

2 MR. WILLIAMS: No questions.

3 THE COURT: Thank you, ma'am.

4 *(Prospective Juror Number 23 departed the bench)*

12 : 43 5 MR. WILLIAMS: Can you agree?

6 THE COURT: Can you all agree?

7 MR. ARMSTRONG: I can agree.

8 THE COURT: We have plenty of jurors anyhow.

9 Number 23 is excused.

12 : 43 10 Who is next?

11 THE CASE MANAGER: Number 26. Her mother works in
12 pain management.

13 *(Open court)*

14 THE COURT: Number 26, come on up.

12 : 43 15 *(Prospective Juror 26 approached the bench)*

16 *(At the bench)*

17 THE COURT: Yes, ma'am? Step back about half a step.

18 That way, everybody can hear.

19 We called you up here because you have a parent
12 : 43 20 that works in a pain management clinic?

21 PROSPECTIVE JUROR: Yes. My mother.

22 THE COURT: What is her -- is she a physician?

23 PROSPECTIVE JUROR: No, no, no. She was a
24 receptionist for several years and now she does insurance work.

12 : 43 25 THE COURT: Who's the doctor?

Jury Selection

12 : 43 1 PROSPECTIVE JUROR: It's several doctors. It's at
2 least two doctors.

3 THE COURT: Do you know their names?

4 PROSPECTIVE JUROR: Oh, yeah, I do. Definitely.

12 : 44 5 Dr. Ponder and Doctor -- and the other one I'm not familiar
6 with. But one of them I do know.

7 THE COURT: Where is the practice?

8 PROSPECTIVE JUROR: In Louisiana.

9 THE COURT: In Louisiana?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Does she talk to you about her business?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: She does?

14 PROSPECTIVE JUROR: And I used to babysit for the
15 doctor as well when I was an undergraduate.

16 THE COURT: Does it involve opioids at all?

17 PROSPECTIVE JUROR: I know they prescribe it when
18 necessary.

19 THE COURT: What do you think about that? Do you
20 think it should be prescribed in the appropriate situation?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: And your mother works in that office?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: How long has she worked there for?

25 MR. ARMSTRONG: Fifteen years plus.

Jury Selection

12 : 44 1 THE COURT: Any reason why you can't be fair and
2 impartial in this case?

3 PROSPECTIVE JUROR: No.

4 MR. WILLIAMS: No questions.

12 : 44 5 THE COURT: Okay. Thank you, ma'am.

6 PROSPECTIVE JUROR: Thank you.

7 *(Prospective Juror Number 26 departed the bench)*

8 THE COURT: Who is the next one?

9 THE CASE MANAGER: Number 27, he read about it in the
12 : 45 10 media.

11 *(Open court)*

12 THE COURT: Come on up, sir.

13 *(Prospective Juror 27 approached the bench)*

14 *(At the bench)*

12 : 45 15 THE COURT: Yes, sir. I understand you saw something
16 you feel about this case in the media?

17 PROSPECTIVE JUROR: I was reading an article in the
18 *Houston Chronicle*.

19 THE COURT: What was it that you read?

12 : 45 20 PROSPECTIVE JUROR: About some physicians prescribing
21 prescriptions in the area that this was mentioned.

22 THE COURT: Do you think it was --

23 PROSPECTIVE JUROR: I don't recall the specific
24 physician's name, but the article sounds kind of familiar to
25 this.

Jury Selection

12 : 45 1 THE COURT: Questions?

2 MR. ARMSTRONG: Any reason why you can't be fair and
3 impartial?

4 PROSPECTIVE JUROR: I don't think so. I mean, the
12 : 45 5 only other thing is since my mother-in-law -- we have done a
6 lot of research on fentanyl and all the other products and all
7 of this just to see what the reactions are in all of this and
8 that sort of thing and not being familiar with those products
9 before and, you know, what the impact is on individuals and
12 : 46 10 that sort of thing.

11 THE COURT: Do you feel you can be fair and impartial
12 in this case?

13 PROSPECTIVE JUROR: I think I could be, yes.

14 THE COURT: Questions?

12 : 46 15 MR. WILLIAMS: We don't want you to think, sir.

16 PROSPECTIVE JUROR: I understand. And the other thing
17 that is, kind of, clouding my mind is I just happened to read
18 two books on the opioid crisis. They were both novels, but
19 they were -- the central theme was the drug crisis.

12 : 46 20 THE COURT: You feel this might not be the best case
21 for you?

22 PROSPECTIVE JUROR: Possibly not. And then the other
23 question I had was -- since my mother-in-law is in an
24 end-of-life situation and if I end up being a juror and
12 : 46 25 something happens to her, what happens, say, if something

Jury Selection

12 : 46 1 happens tomorrow?

2 THE COURT: Where is she located?

3 PROSPECTIVE JUROR: In Baytown.

4 THE COURT: Well, in that case, we would make some
12 : 46 5 arrangements, if you were on the jury, if something happens.

6 Questions?

7 MR. ARMSTRONG: Nothing, Judge.

8 MR. WILLIAMS: Anything regard the article that you
9 read that would cause you to be biased against the doctor that
12 : 47 10 you read about, if it ends up being this particular person?

11 PROSPECTIVE JUROR: No. Because I have no -- the
12 name -- I don't even recall the name.

13 THE COURT: Okay. Thank you, sir.

14 *(Prospective Juror Number 27 departed the bench)*

15 THE COURT: Government, any challenge?

16 MR. ARMSTRONG: No, Judge.

17 THE COURT: Defense?

18 MR. LEWIS: Yes. Challenge for cause.

19 THE COURT: Why?

12 : 47 20 MR. LEWIS: I do believe that he has indicated to the
21 Court that his recent reading of materials have influenced his
22 opinions regarding opioids and the use of opioids.

23 THE COURT: I'm not sure he said influence but he
24 learned a lot about them.

12 : 47 25 MR. LEWIS: He has taken positions, and those

Jury Selection

12 : 47 1 positions would be inconsistent with him serving as a juror, or
2 potentially inconsistent with him serving as a qualified juror
3 on this panel.

12 : 48 4 THE COURT: He also stated he has someone in the
5 end-of-life hospice and he expressed a concern about
6 continuing. Even though we are going to seat 14 jurors, I
7 think -- we have others and we are all right as far as jurors
8 go. So based upon that, I will excuse Number 27.

9 Who is next?

12 : 48 10 THE CASE MANAGER: Number 30, her son is addicted to
11 meth.

12 (Open court)

13 THE COURT: Number 30, do you want to come on up?

14 (Prospective Juror 30 approached the bench)

12 : 48 15 (At the bench)

16 THE COURT: Here is your microphone right there.

17 Okay. I understand you had a youngster who may
18 be having a health problem.

19 PROSPECTIVE JUROR: He is not young. He is 42.

12 : 48 20 THE COURT: Pardon?

21 PROSPECTIVE JUROR: Forty-two. His whole life.

22 THE COURT: Addicted to what?

23 PROSPECTIVE JUROR: To meth.

24 THE COURT: Methamphetamine?

12 : 48 25 PROSPECTIVE JUROR: Yes.

Jury Selection

12 : 48 1 THE COURT: This is not methamphetamines. Okay. I'm
2 going to let the attorneys jump in.

3 MR. ARMSTRONG: Thank you, Judge.

4 Has your son had any run-ins with law
12 : 49 5 enforcement?

6 PROSPECTIVE JUROR: Yes. He is in prison.

7 MR. ARMSTRONG: He's in for what?

8 PROSPECTIVE JUROR: For the drugs. He was caught with
9 them.

12 : 49 10 MR. ARMSTRONG: Was he arrested and charged with just
11 possession or distributing?

12 PROSPECTIVE JUROR: I don't know. It's a felony.

13 THE COURT: Is that in state court?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Here?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Whereabouts?

18 PROSPECTIVE JUROR: Arizona.

19 THE COURT: Questions?

12 : 49 20 MR. ARMSTRONG: Do you feel like he was treated fairly
21 or unfairly?

22 PROSPECTIVE JUROR: Yes. He was treated fairly.

23 MR. WILLIAMS: Ma'am, as a result of your son having
24 these problems with meth, has it clouded your opinion one way
25 or another regarding any drug usage, whether it is legal or

Jury Selection

12 : 49 1 illegal?

2 PROSPECTIVE JUROR: No.

3 THE COURT: So you feel if it was an appropriate case
4 for pain medication, that there is a need for that to be
12 : 49 5 prescribed?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Keep going.

8 MR. WILLIAMS: Okay. So I lost my train of thought.
9 So basically what you are telling me is that the incident with
12 : 50 10 your son won't influence you one way or the other?

11 PROSPECTIVE JUROR: No.

12 MR. WILLIAMS: In terms of being a juror?

13 PROSPECTIVE JUROR: No.

14 MR. WILLIAMS: No further questions.

12 : 50 15 THE COURT: Thank you, ma'am.

16 *(Prospective Juror Number 30 departed the bench)*

17 THE COURT: Any objections?

18 MR. ARMSTRONG: No, sir.

19 MR. WILLIAMS: No, Your Honor.

12 : 50 20 THE COURT: Next one?

21 THE CASE MANAGER: Number 33, his sister died of an
22 overdose.

23 *(Prospective Juror 33 approached the bench)*

24 *(At the bench)*

12 : 50 25 THE COURT: I understand you had a family member that

Jury Selection

12 : 50 1 had an unfortunate situation relative to drugs of some sort?

2 PROSPECTIVE JUROR: I had a sister -- about 10 years
3 ago, she died of a drug overdose.

4 THE COURT: What sort of drugs?

12 : 50 5 PROSPECTIVE JUROR: She was a pill popper. From the
6 time she was in high school, she had pills from every one of
7 her kids and then she had doctors prescribing pills and she
8 just took them all her life.

9 THE COURT: What sort of pills?

10 PROSPECTIVE JUROR: I have no idea.

11 THE COURT: Pain pills?

12 PROSPECTIVE JUROR: You know, she had back surgery and
13 I'm sure she had some pain pills with that.

14 THE COURT: Any questions?

12 : 51 15 MR. ARMSTRONG: Any reason you can't be fair and
16 impartial in this case that involves maybe those same drugs?

17 PROSPECTIVE JUROR: I think I can be fair and
18 impartial. I have a question. I worked with the DEA. They
19 came to me about three years ago and wanted a surveillance
20 camera on my property, and I let them do it.

21 THE COURT: Who were they surveilling? A drug
22 operation?

23 PROSPECTIVE JUROR: Yes. A drug operation. But I
24 never found out what happened. They did it about six months
25 and left.

Jury Selection

12 : 51 1 MR. ARMSTRONG: Do you have any negative feelings
2 about the DEA based on that experience?

3 PROSPECTIVE JUROR: No. I think it was a good deal.

4 MR. WILLIAMS: As a result of your allowing the DEA to
12 : 51 5 do some surveillance on your particular property, okay, did
6 they tell you what the investigation was regarding?

7 PROSPECTIVE JUROR: They just said it was a house that
8 was doing some drug dealing, and it was across the street.

9 MR. WILLIAMS: And because they were able to use your
12 : 51 10 particular property, did they tell you the end result of what
11 they --

12 PROSPECTIVE JUROR: No. I never found out anything.
13 I never heard in the paper or anything.

14 MR. WILLIAMS: As to your sister, you said she was a
12 : 52 15 pill popper and you knew she had some pain issues?

16 PROSPECTIVE JUROR: Yes. She had pain all her life.
17 She had seven operations on her back.

18 MR. WILLIAMS: And she ultimately became addicted to
19 these particular opioids, did she not?

12 : 52 20 PROSPECTIVE JUROR: I don't know what they were. They
21 were painkillers. I'm not about addicted. She was doing it
22 before she had pain. She was addicted her whole life before
23 that.

24 MR. WILLIAMS: Would that experience influence you one
12 : 52 25 way or the other regarding your feelings regarding pain pills?

Jury Selection

12 : 52 1 PROSPECTIVE JUROR: No.

2 MR. LEWIS: Do you believe that the physicians that
3 prescribed drugs to your sister had a role in causing your
4 sister's death?

12 : 52 5 PROSPECTIVE JUROR: No. She was getting pills from
6 everywhere.

7 MR. LEWIS: Do you believe that the prescriptions from
8 the doctors that she was getting -- in order for her to get the
9 pills, that the doctor had a role in providing those pills to
12 : 53 10 her that caused her death?

11 PROSPECTIVE JUROR: I don't think so, but I don't
12 know. I don't know what she was taking, you know, I mean --
13 and I don't know ultimately what she died of. It was just some
14 kind of pills.

12 : 53 15 THE COURT: Okay. Thank you, sir.

16 *(Prospective Juror Number 33 departed the bench)*

17 THE COURT: Do we have a challenge on Number 33?

18 Government?

19 MR. ARMSTRONG: Nothing from the government.

12 : 53 20 MR. LEWIS: Yes. Challenge for cause on the fact that
21 I believe the experience with his sister, even though he is not
22 sure what the role of the doctors was, is a problem that does
23 not qualify him to be fair and impartial as it relates to this
24 particular case.

12 : 53 25 MR. ARMSTRONG: Judge, he expressly said that he had

Jury Selection

12 : 53 1 no reservations --

2 THE COURT: I understand -- go on. I'm sorry.

3 Anything else?

4 MR. WILLIAMS: And, Judge, his association with DEA to
12 : 53 5 participate -- this case is going to include some surveillance,
6 and I think that is going to sway his thinking as to what is
7 going on, Judge.

8 THE COURT: I understand the defense objections, but
9 he answered every question correctly, so I'm going to have to
12 : 54 10 overrule the challenge on this one.

11 Next?

12 THE CASE MANAGER: Number 37, the catchall.

13 (*Open court*)

14 THE COURT: Number 37, yes, ma'am. Come on up.

12 : 54 15 (*Prospective Juror 37 approached the bench*)

16 (*At the bench*)

17 THE COURT: Did you want to talk to us?

18 PROSPECTIVE JUROR: I did, yes. I just wanted to let
19 you know I'm in the middle of two transactions right now for
20 Shell. I do mergers and acquisitions. One of them closes this
21 week and so I have to take a trip to Chicago.

22 THE COURT: Well, did you tell them downstairs at the
23 jury -- where it asked any inability to serve as a juror, and
24 you said no on your juror sheet.

12 : 54 25 PROSPECTIVE JUROR: The other one is my husband

Jury Selection

12 : 54 1 travels for a living -- travels for work, as well, and so next
2 week he is going to be out of town and I have to take care of
3 my son.

4 THE COURT: Do you work outside the home?

12 : 55 5 PROSPECTIVE JUROR: I do. I work for Shell.

6 THE COURT: Are you going to take time off from work
7 and stay home?

8 PROSPECTIVE JUROR: No, no, no. I have to pick him up
9 from school at the end of the day.

12 : 55 10 THE COURT: What time is that?

11 PROSPECTIVE JUROR: I have to pick him up before 6:00.

12 THE COURT: Questions? Any questions?

13 MR. WILLIAMS: No questions.

14 *(Prospective Juror Number 37 departed the bench)*

12 : 55 15 MR. WILLIAMS: I think we should agree to release her.

16 THE COURT: I'm not sure we are getting the straight
17 skinny here, but she said all the correct reasons for getting
18 off jury duty and she is probably someone we don't want on the
19 jury. I think we have all been around enough to know to let
20 them go.

21 MR. WILLIAMS: If they have to find a reason.

22 THE COURT: Yeah. Throw everything up on the wall and
23 something is going to stick and maybe the judge will go along
24 with you.

25 Who is next?

Jury Selection

12 : 55 1 THE CASE MANAGER: Number 39, her daughter had chronic
2 pain.

3 (Open court)

4 THE COURT: Number 39, come on up.

12 : 56 5 (Prospective Juror 39 approached the bench)

6 (At the bench)

7 THE COURT: Yes, ma'am? You said you have a
8 daughter-in-law with chronic pain, right?

9 PROSPECTIVE JUROR: Yes.

12 : 56 10 THE COURT: Step back a little bit.

11 What is she taking for that? Do you know?

12 PROSPECTIVE JUROR: I know she takes hydrocodone and
13 she takes something else, but I'm not really sure what it is.

14 THE COURT: Does she live here in --

12 : 56 15 PROSPECTIVE JUROR: She lives in Bentonville,
16 Arkansas.

17 THE COURT: In Arkansas. Do you see her often?

18 PROSPECTIVE JUROR: I see her about every quarter.

19 THE COURT: Do you know if this medication was
12 : 56 20 prescribed by a physician for her?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: How long has she had the problem?

23 PROSPECTIVE JUROR: She has had the problem for about
24 15 years.

12 : 56 25 THE COURT: Fifteen years. She is doing all right?

Jury Selection

12 : 56 1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Has she overdosed anytime as far as you
3 know?

4 PROSPECTIVE JUROR: No.

12 : 56 5 THE COURT: All right. Questions?

6 MR. ARMSTRONG: How long has she been taking
7 hydrocodone for, ma'am?

8 PROSPECTIVE JUROR: Probably about 15 years.

9 MR. ARMSTRONG: Did she try any other treatments
12 : 56 10 before taking hydrocodone?

11 PROSPECTIVE JUROR: I don't know about that.

12 MR. ARMSTRONG: Any reason why you can't be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR: Sir?

12 : 57 15 MR. ARMSTRONG: Any reason why you can't be fair and
16 impartial in this case?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Questions?

19 MR. WILLIAMS: No questions.

12 : 57 20 THE COURT: Thank you, ma'am.

21 PROSPECTIVE JUROR: I have something else to add
22 though.

23 THE COURT: What have you got?

24 PROSPECTIVE JUROR: I work for Social Security, but in
12 : 57 25 my office, I'm the one that they refer the social security, the

Jury Selection

1 SSI frauds to the OIG, and I work with the OIG agents on that.
2 But I thought you ought to know it.

3 THE COURT: All right. Thank you.

4 PROSPECTIVE JUROR: Thank you.

12 : 57 5 *(Prospective Juror Number 39 departed the bench)*

6 THE COURT: Any challenge on 39?

7 MR. ARMSTRONG: No, Judge.

8 MR. WILLIAMS: No.

9 THE COURT: Next one?

12 : 57 10 THE CASE MANAGER: Number 41, you stopped him from
11 saying something.

12 *(Open court)*

13 THE COURT: Yes, sir. Come on up.

14 *(Prospective Juror 41 approached the bench)*

12 : 57 15 *(At the bench)*

16 THE COURT: I think we cut you off when you were
17 saying something and we said we would talk to you later, right?

18 PROSPECTIVE JUROR: No.

19 MR. ARMSTRONG: If I may, I believe your
12 : 57 20 brother-in-law has chronic pain?

21 PROSPECTIVE JUROR: Yes.

22 MR. ARMSTRONG: Does he take any drugs for that?

23 PROSPECTIVE JUROR: I think he takes a lot of drugs
24 for that. I don't know the extent of it.

12 : 58 25 THE COURT: Does he live here?

Jury Selection

12 : 58 1 PROSPECTIVE JUROR: He lives in North Carolina.

2 THE COURT: Go on.

3 MR. ARMSTRONG: Has he had any bad experiences with
4 chronic pain?

12 : 58 5 PROSPECTIVE JUROR: I don't know what is associated
6 with the treatments and what is associated with the underlying
7 issues. He has had -- from the age of 17 -- he is almost 30 --
8 he has continuously had treatment. I honestly try to stay out
9 of it. It's my brother-in-law so --

12 : 58 10 THE COURT: All right. We all understand, one way or
11 the other.

12 PROSPECTIVE JUROR: I don't want to learn too much
13 about it.

14 THE COURT: Okay. Questions?

12 : 58 15 MR. LEWIS: Do you know anything about -- have any
16 opinions about the appropriateness of the doctors that are
17 prescribing these medications for your brother-in-law?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Do you know whether or not he obtains all
20 of these prescriptions by -- all these medications by
21 prescriptions that's issued by the doctor?

22 PROSPECTIVE JUROR: I believe he does, yes.

23 THE COURT: Thank you, sir.

24 *(Prospective Juror Number 41 departed the bench)*

12 : 59 25 THE COURT: Any challenge?

Jury Selection

12 : 59 1 MR. ARMSTRONG: No, Judge.

2 THE COURT: Okay. Next?

3 THE CASE MANAGER: Number 42, she has someone with a
4 drug addiction.

12 : 59 5 *(Open court)*

6 THE COURT: Yes, ma'am. Come on up, Number 42.

7 *(Prospective Juror 42 approached the bench)*

8 *(At the bench)*

9 THE COURT: Do you want to visit with us?

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: What are the concerns that you had or was
12 it the concerns that I had?

13 PROSPECTIVE JUROR: You asked me if I had known people
14 that had problems with addiction.

12 : 59 15 THE COURT: Right.

16 PROSPECTIVE JUROR: Yes, I have. And then also I'm on
17 pain medication.

18 THE COURT: Yourself?

19 PROSPECTIVE JUROR: Yes.

12 : 59 20 THE COURT: For what?

21 PROSPECTIVE JUROR: For chronic sciatic.

22 THE COURT: How long have you been on that medicine?

23 PROSPECTIVE JUROR: Almost twenty years.

24 THE COURT: And what medications are you on?

13 : 00 25 PROSPECTIVE JUROR: Right now I'm just on the hydra --

Jury Selection

13 : 00 1 it's a different name now. Oxy --

2 THE COURT: Oxycodone?

3 PROSPECTIVE JUROR: That's it.

4 THE COURT: Questions?

13 : 00 5 MR. ARMSTRONG: Have you ever been prescribed a
6 combination of a muscle relaxant with the opioid?

7 PROSPECTIVE JUROR: Yes. I tend not to do that. I
8 try to take as little as possible just to go through the day,
9 but I don't -- I'm real sensitive to different drugs like
13 : 00 10 Insess (phonetic) and stuff like that so we try not to mix
11 anything.

12 MR. ARMSTRONG: Have you had any good or bad
13 experiences that would sway you from being fair and impartial
14 in this case?

13 : 00 15 PROSPECTIVE JUROR: Not really, no.

16 THE COURT: Questions?

17 MR. WILLIAMS: No questions.

18 MR. LEWIS: No questions.

19 THE COURT: Thank you, ma'am.

13 : 00 20 (*Prospective Juror Number 42 departed the bench*)

21 THE COURT: Any challenge on 42?

22 MR. ARMSTRONG: No, Judge.

23 MR. LEWIS: No, Judge.

24 THE COURT: Next?

13 : 00 25 THE CASE MANAGER: Number 48, she raised her hand on

Jury Selection

13 : 0 0 1 the opioid epidemic question.

2 THE COURT: She raised her hand on the opioid
3 epidemic. We'll get her thoughts up here.

4 *(Prospective Juror 48 approached the bench)*

13 : 0 1 5 THE COURT: There is your microphone right there.

6 Yes, ma'am. You raised your hand relative to some thoughts on
7 the opioid epidemic?

8 PROSPECTIVE JUROR: My ex-husband is an addict.

9 THE COURT: How long were you married to him?

13 : 0 1 10 PROSPECTIVE JUROR: Six years.

11 THE COURT: What sort of drug was he on?

12 PROSPECTIVE JUROR: Anything he could get his hands
13 on.

14 THE COURT: Okay. Where is he now?

15 PROSPECTIVE JUROR: I don't --

16 THE COURT: And you don't want to know.

17 PROSPECTIVE JUROR: We have a child together, so
18 minimal contact.

19 THE COURT: Yes.

13 : 0 1 20 PROSPECTIVE JUROR: I just evicted him from the house
21 that he was renting, which I own, so he is kind of couch
22 surfing, I guess.

23 THE COURT: Thank you. Questions?

24 MR. ARMSTRONG: Because of this experience, any reason
13 : 0 1 25 you can't be fair and impartial in this case?

Jury Selection

13 : 01 1 PROSPECTIVE JUROR: No, not necessarily. The only
2 concern I have is, I'm a diabetic so I wear a medical device.
3 And I can silence it for the most part, but once I hit a
4 critical low number, it will start beeping.

13 : 02 5 THE COURT: Any time it starts beeping, we will take a
6 break. I have had people --

7 PROSPECTIVE JUROR: I'm getting close. I can monitor
8 it on my watch.

9 THE COURT: You can do it on your own, take the
13 : 02 10 medication?

11 PROSPECTIVE JUROR: Yes. I can keep, like, some candy
12 in my pocket.

13 THE COURT: Any questions?

14 MR. ARMSTRONG: No, Judge.

15 MR. WILLIAMS: No, Judge.

16 MR. LEWIS: Do you know if your ex-husband acquired
17 these medications by prescription from his doctor?

18 PROSPECTIVE JUROR: Most of them, no. He stole them
19 from his mother who had a congenital back, degenerative back
20 disease or something. And then he started abusing Adderall,
21 which he did get by prescription from his primary care doctor.

22 MR. LEWIS: Do you believe his doctor or any of his
23 doctors had a role in causing his addiction?

24 PROSPECTIVE JUROR: No. It was him.

13 : 02 25 THE COURT: It was him?

Jury Selection

13 : 02 1 PROSPECTIVE JUROR: It was him.

2 THE COURT: Okay. Thank you. Thank you, ma'am.

3 *(Prospective Juror Number 48 departed the bench)*

4 THE COURT: Any challenges on 43 (sic)? Government?

13 : 03 5 MR. ARMSTRONG: No, Judge.

6 THE COURT: Defense?

7 MR. LEWIS: No, Judge.

8 THE CASE MANAGER: Next is Number 44.

9 *(Prospective Juror 44 approached the bench)*

13 : 03 10 THE COURT: Yes, sir? Step back about half a step.

11 There it is. There is your microphone. There it is.

12 PROSPECTIVE JUROR: I wanted to talk to you because
13 things are evolving much quicker than I thought they would. As
14 I indicated earlier, my wife has had several back surgeries and
15 she has gone to a neurosurgeon who is saying she has got a
16 critical situation near the base of her spine. And he said, I
17 want to do surgery ASAP. What is ASAP? When the insurance
18 kicks in and says, well, we want a second opinion, so when is
19 the second opinion? We thought several weeks. It's tomorrow.
20 So not only is it tomorrow, but the doctor said, "The minute
21 you get the results from tomorrow, call back to the first
22 doctor because we want to schedule you." Is that three days or
23 10 days?

24 THE COURT: Any questions?

13 : 04 25 MR. ARMSTRONG: No, Judge.

Jury Selection

13 : 04 1 THE COURT: Any questions?

2 MR. LEWIS: No, Judge.

3 THE COURT: Thank you, sir.

4 *(Prospective Juror Number 44 departed the bench)*

13 : 04 5 THE COURT: Dismissed by agreement, Number 44. Who is
6 the last one?

7 THE CASE MANAGER: Number 47, his brother has a
8 substance abuse problem.

9 *(Open court)*

10 THE COURT: Okay. Come on up, sir. Sorry you had to
11 wait so long, but you still have plenty of time for lunch.

12 *(Prospective Juror 47 approached the bench)*

13 *(At the bench)*

14 THE COURT: This is Number 47.

13 : 04 15 You say your brother has a substance abuse
16 problem?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. What sort of problem?

19 THE COURT REPORTER: I'm sorry. I can't hear.

13 : 04 20 THE COURT: This is the microphone. You can speak up
21 a little bit because there are no jurors in the room.

22 PROSPECTIVE JUROR: He does meth and anything else
23 that can get him high.

24 THE COURT: Get him high?

25 PROSPECTIVE JUROR: Yes.

Jury Selection

13 : 04 1 THE COURT: How long has he been on the stuff?

2 PROSPECTIVE JUROR: At least 12 plus years.

3 THE COURT: What?

4 PROSPECTIVE JUROR: Twelve years at least.

13 : 05 5 THE COURT: Does he use hydrocodone or any kind of
6 painkillers?

7 PROSPECTIVE JUROR: I know meth is one of them.

8 THE COURT: Okay. Has he had any medical conditions
9 that brought this on or just an unfortunate addiction?

13 : 05 10 PROSPECTIVE JUROR: Just an addiction problem.

11 THE COURT: Questions?

12 MR. ARMSTRONG: Any reason why you can't be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR: I could try based on the --

13 : 05 15 THE COURT: Put it this way. Only you know. Only you
16 know. Is this the right kind of case for you? Only you can
17 tell us.

18 PROSPECTIVE JUROR: I may be impartial. I will try to
19 be based on the data that I have.

20 THE COURT: Questions?

21 MR. WILLIAMS: Sir, we don't mean to badger you
22 regarding this, but we need to be clear that you can be fair to
23 both particular sides. If there is anything about this that
24 would cause you to hesitate about being fair on either side, we
25 need to know that at this point.

Jury Selection

13 : 05 1 Does your brother's addiction cause you any
2 problems serving on this particular jury?

3 PROSPECTIVE JUROR: No. I can try to be impartial and
4 fair.

13 : 06 5 MR. WILLIAMS: I know you say you will try to be --

6 THE COURT: Are you having a concern because of the
7 background of your family?

8 PROSPECTIVE JUROR: Yes.

13 : 06 9 THE COURT: All right. Thank you, sir. Thank you so
10 much. We will see you later.

11 *(Prospective Juror Number 47 departed the bench)*

12 THE COURT: Step back a little.

13 Any challenge on Number 47?

14 MR. WILLIAMS: Yes.

13 : 06 15 THE COURT: Why?

16 MR. WILLIAMS: He has a concern about being fair.

17 THE COURT: Government's position?

18 MR. ARMSTRONG: No objection.

19 THE COURT: No objection. That is 47 is gone for
13 : 06 20 cause.

21 Ellen, get all of your sheets out and let's go
22 down and see where we are. This is a long one. This is the
23 longest I have had in a long time, but I think we got ourselves
24 a good jury. It was clean.

13 : 06 25 MR. ARMSTRONG: Thank you, Judge.

Jury Selection

13 : 06 1 (Open court)

2 THE COURT: Let's look at your sheets, everybody. My
3 case manager is going to call off the numbers. Let me go down
4 my sheet also.

13 : 07 5 These are the ones excused for cause, right,
6 Ellen? Okay. Go on.

7 THE CASE MANAGER: Number 3.

8 THE COURT: I'm going to repeat it. 3.

9 THE CASE MANAGER: 10.

13 : 07 10 THE COURT: 10.

11 THE CASE MANAGER: 17.

12 THE COURT: 17.

13 THE CASE MANAGER: 23.

14 THE COURT: 23.

13 : 07 15 THE CASE MANAGER: 27.

16 THE COURT: 27.

17 THE CASE MANAGER: 37.

18 THE COURT: 37.

19 THE CASE MANAGER: 44.

13 : 07 20 THE COURT: 44.

21 THE CASE MANAGER: And 47.

22 THE COURT: And 47. All right. Now, as you know,
23 initially with the agreement we had with the blind draw, Number
24 32 was initially in the panel. Correct? Number 32, if there
25 were no strikes, Number 32. With the strikes down below or

Jury Selection

13 : 07 1 above, where does it take us to get 12 persons on the jury?

2 THE CASE MANAGER: Twelve. Or are we doing the blind
3 draw?

4 THE COURT: We are doing the blind draw. We have 14.
13 : 08 5 Number 32 is in the panel, right, with the blind draw.

6 Twenty-eight, plus four, that's 32, but we are going to go
7 seven and 11 strikes, so we are going up to 32. Number 32 is
8 in the panel initially.

9 Let's see how many people below have been struck
13 : 08 10 where the number goes. Number 3. Right? Number 3, 10, 17,
11 23, 27. So 27 below, right? So how many is that did I call
12 out?

13 MR. ARMSTRONG: Five.

14 THE CASE MANAGER: Five.

15 THE COURT: So we add five to that. 37 is in the
16 panel, but Number 37 is a strike. Correct? So now Number 38
17 is in the panel. Correct? Now, we have how many total jurors?

18 THE CASE MANAGER: Forty-seven.

19 THE COURT: There are 47 total, so 38 to 47, that's
13 : 09 20 nine. Right? How many though on the remaining time we have
21 strikes? Forty-three? One? Two? Two. That's 47. So 45
22 could potentially -- and that would be -- that would be six,
23 three and three. Correct? All right. It's up to you. You
24 will each have seven and 11 strikes through Number 38, but if
25 you want extra strikes, each side could get an additional

Jury Selection

13 : 09 1 three. You don't have to take them. It's strictly up to you,
2 in which case you will strike all the way through the end,
3 knowing who has already been struck all the way down. It's
4 strictly up to you.

13 : 09 5 For three additional strikes per side, what about
6 the government? What is your position?

7 MR. ARMSTRONG: I'm sorry. My confusion. We
8 potentially have 10 strikes through 38?

9 THE COURT: Pardon me? No. It's 38 now. You have
13 : 10 10 got six and 10 and 38 is in the panel with the basics that you
11 would have. Ordinarily, you would have to be 32. Right? With
12 all the strikes here, Number 38 is in the panel for seven and
13 11 strikes, seven on one side and 11 on the other. So 38 is
14 now in the panel. If you want to go all the way through to the
15 end, keeping in mind that we have a few others knocked out,
16 then each side can get three to even out the numbers.

17 MR. ARMSTRONG: Either way is fine, Judge.

18 THE COURT: Either way?

19 MR. ARMSTRONG: Either way is fine.

13 : 10 20 THE COURT: Defense, what is your preference?

21 MR. WILLIAMS: One second, Your Honor.

22 *(Pause)*

23 MR. WILLIAMS: We would like to take the additional
24 three, Judge.

13 : 11 25 THE COURT: An additional three strikes. All right.

Jury Selection

13 : 11 1 Let's make sure of the numbers. Okay? 38 is in the panel. I
2 want to work through this. 38 is in the panel, which leaves us
3 seven possibilities. No. 38, 39, 40, yeah. That's nine extra
4 strikes. Ordinarily, it would be nine extra strikes; however,
5 between 38 and 47, we have how many strikes? Two more struck,
6 so that brings down that you don't have nine, you would have
7 seven, but we have to balance it off. Right? We have three
8 and three. You have to get an even number. So at this point
9 then -- don't forget Number 47 is one that was struck. So up
13 : 11 10 and down your list -- hang on.

11 *(Off the record discussion held)*

12 THE COURT: You strike up and down the whole panel
13 making sure you don't touch these guys who are already out.
14 Okay?

13 : 12 15 MR. ARMSTRONG: Yes, Judge.

16 THE COURT: I just want to make sure the math is
17 right. There are your extra strikes. Three extra each.

18 It is now 1:14 and they are getting back in at
19 what time? 2:30. That was about right because we need to take
20 an hour and 15-minute break. Make your strikes. Okay. You
21 can stay here. One group can use the jury room, if you would
22 like. And the other can do it out here. You don't know who is
23 striking. Some courts will put you -- up in the east
24 somewhere, they will put you in and make each of you take your
25 peremptory strikes one after the other so there are no double

Jury Selection

13 : 13 1 strikes. We don't work it this way. You just cross through
2 either, what is it, 11 or 14 names. Government, you can cross
3 through 11.

4 MR. ARMSTRONG: Ten.

13 : 13 5 THE COURT: No. Ten. I'm sorry 10 and 14.
6 Government gets 10; defense gets 14.

13 : 13 7 Once you do that, just lay your sheets facedown
8 on Ellen's desk and then take a break. We will need them not
9 later than 2:15. So if you want to take time or you want to
10 take a lunch break or talk about it over lunch, it doesn't
11 matter, but we need all of your strikes on the desk -- and, of
12 course, sign them so we know who is making the strikes -- not
13 later than 2:15.

14 Any questions from the government?

13 : 13 15 MR. ARMSTRONG: None, Judge.

16 THE COURT: Any from the defense?

17 MR. LEWIS: No, Judge.

18 MR. WILLIAMS: No, Judge.

19 THE COURT: It's a little bit different, but I think
20 we have got ourselves a good panel. Hopefully, we do.

21 See you back at 2:30 and we need your information
22 by 2:15.

23 (*Court recessed at 1:15 p.m.*)

24 (*Court resumed at 2:35 p.m.*)

25 (*Jury not present*)

Jury Selection

14 : 35 1 THE COURT: I understand you want to bring something
2 up. Just tell me about it.

14 : 36 3 MR. WILLIAMS: Judge, after our hearing on Friday, I
4 received some other documents from the government. These were
5 exhibits that -- some of them I had and some I haven't had.

14 : 36 6 THE COURT: Some you haven't had. I want to hear
7 about that in a moment. Go on.

14 : 36 8 Excuse me. Tell the jury we will be with them in
9 a few minutes. We are in here and we will see them in about
10 five minutes. Thank you.

11 Go on.

12 MR. WILLIAMS: After the particular hearing, I
13 requested the alleged thumb drive that the witness testified to
14 that she produced the documents on. Okay. On Saturday, I went
15 down to look at the particular documents --

16 THE COURT: For the first time?

17 MR. WILLIAMS: Yes. The evidence that they had.
18 Okay.

19 THE COURT: How come you went -- but you had never
20 seen these before ever? Excuse me. Had you ever seen those
21 before, ever?

22 MR. WILLIAMS: Some of those documents I had and some
23 of them I had not.

24 THE COURT: Which ones had you not?

25 MR. WILLIAMS: Those were the documents that I

Jury Selection

14 : 36 1 received Friday evening, so as a result, I wanted to come down
2 and look at the original particular documents that were part of
3 the trial exhibits. Okay. I go down. I was told at that
4 particular time that Ms. Phillips brought the documents in.
14 : 37 5 They told her to go back and put them on a thumb drive. She
6 brought the thumb drive back. They downloaded the particular
7 thumb drive, but she didn't leave the original -- I mean, the
8 original documents, the loose documents that she testified to.

9 I asked the agent at that particular time, When
14 : 37 10 did you get these documents back if, in fact, she produced a
11 thumb drive that you downloaded? He said, I can't tell you
12 when, but it was sometime between --

13 THE COURT: Who told you that?

14 MR. WILLIAMS: Diversion Officer Mills.

15 THE COURT: Who?

16 MR. WILLIAMS: Diversion Officer Mills.

17 THE COURT: All right.

18 MR. WILLIAMS: So out of an abundance of caution, I
19 would like to receive the actual thumb drive that they claim
20 she had.

14 : 37 21 Now, I was told that they gave -- after they
22 downloaded it, they gave the thumb drive back to her. And I
23 would like the government to produce those. Okay? Because I
24 want to compare those particular documents to see if they are
25 the same documents that have been Bates stamped and is trying

Jury Selection

14 : 38 1 to be used in the particular evidence by the government in this
2 particular trial.

3 THE COURT: Okay. Response?

4 MR. ARMSTRONG: Your Honor, we are not --

14 : 38 5 THE COURT: Make it short and to the point.

6 MR. ARMSTRONG: Judge, we are not producing any of
7 these supposedly new documents in our case in chief. That
8 issue in our view is entirely moot. Mr. Williams is making
9 some argument about some thumb drive. We have both the scanned
10 copies and the hard copies. The scanned copies were produced
11 weeks ago and the hard copies have been available --

12 THE COURT: You produced all of those documents when?

13 MR. ARMSTRONG: Weeks ago. And the hard copies have
14 been at DEA --

14 : 38 15 THE COURT: Slow down.

16 MR. ARMSTRONG: I'm sorry. And the hard copies have
17 been at DEA since Ms. Phillips gave them, which was before
18 indictment.

19 THE COURT: Has he ever come down and looked at them?
20 Come to your place?

21 MR. ARMSTRONG: Not that I can recall, Judge, except
22 for this last Saturday.

23 THE COURT: Last Saturday, which was after the court
24 hearing we had on Friday?

25 MR. ARMSTRONG: Yes.

Jury Selection

14 : 38 1 THE COURT: So what is your response?

2 MR. ARMSTRONG: Judge, I quite frankly don't even
3 understand his objection.

4 THE COURT: He needs to get it in the record. You
14 : 39 5 have that in the record.

6 MR. WILLIAMS: My objection is this, Judge, if there
7 is a thumb drive that this witness brought with documents on
8 it, okay, there is no way for me to know what was on that
9 particular thumb drive unless they produce the thumb drive.

14 : 39 10 THE COURT: Do you have the thumb drive?

11 MR. ARMSTRONG: It's not in our possession.

12 THE COURT: Who has it? Who has got it?

13 MR. ARMSTRONG: I assume that it was given back to
14 Lorin Phillips who has it.

14 : 39 15 MR. WILLIAMS: And that's my concern, Judge.

16 MR. ARMSTRONG: But, Judge, the documents
17 themselves --

18 THE COURT: Go on.

19 MR. ARMSTRONG: The documents themselves, we have the
14 : 39 20 scanned copies and we have the hard copies.

21 THE COURT: Are they the same thing that was on the
22 thumb drive?

23 MR. ARMSTRONG: Yes.

24 MR. WILLIAMS: Until we have the thumb drive, how do
14 : 39 25 we know that, Judge?

Jury Selection

14 : 39 1 MR. ARMSTRONG: Judge, she is going to testify, These
2 are the documents that I saved. And she is going to lay the
3 foundation on the stand.

4 THE COURT: Does she have the thumb drive?

14 : 39 5 MR. ARMSTRONG: We haven't asked her, Judge. We are
6 not going to chase Mr. Williams down this rabbit hole.

7 THE COURT: Say that again.

8 MR. ARMSTRONG: We have refused so far to chase
9 Mr. Williams down this rabbit hole.

14 : 39 10 THE COURT: The first thing you do is get the thumb
11 drive, if she has it. If she doesn't have it, then that's it.
12 And you can't do anything else. But at least inquire, is it
13 still in existence. Right? Hold it. I don't need to know
14 right now. You tell me. You find out if it is still in
15 existence. Whether I will order it produced or not, I don't
16 know, but let's see first if it is in existence. If it is not
17 in existence anymore, or the witness can't find it, there is
18 nothing else we can do because you made your point. But if it
19 is in existence, let me decide at that time.

14 : 40 20 MR. ARMSTRONG: Thank you, Judge.

21 THE COURT: All right. Let's call the jury in.

22 (*The venire panel enters*)

23 THE COURT: Before we begin, as far as the defense
24 goes, as far as total time goes, you will be sharing that time.
25 Is that correct? Rather than keep records of each of you, when

Jury Selection

14 : 42 1 each of you run out, you can't share.

2 MR. WILLIAMS: That makes sense, Judge. We will
3 share.

4 THE COURT: Okay. Got it. Ellen? She is about --
14 : 42 5 ladies and gentlemen, as Ellen calls your name, please come
6 forward. The first seven of you will be in the front row; the
7 next seven in the back row.

8 Go right ahead.

9 THE CASE MANAGER: Juror Number 5, [REDACTED]; Juror
10 Number 6, [REDACTED]; Juror Number 11, [REDACTED]; Juror
11 Number 12, [REDACTED]; Juror Number 13, [REDACTED];
12 Juror Number 14, [REDACTED]; Juror Number 15, [REDACTED]
13 [REDACTED]; Juror Number 18, [REDACTED]; Juror Number 20,
14 [REDACTED]; Juror Number 22, [REDACTED]; Juror
15 Number 24, [REDACTED]; Juror Number 29, [REDACTED];
16 Juror Number 31, [REDACTED]; Juror Number 34, [REDACTED]
17 [REDACTED].

18 THE COURT: Just so the jury has an idea, everybody on
19 the left side, everybody, was in consideration. Just because
20 you were a certain number didn't mean it was cut off there. By
21 the agreement of the parties and allocating additional strikes,
22 everyone here had a shot to get on the jury, but it was just
23 the first 14 names that had no strike on either side.

24 Ladies and gentlemen, those of you that have not
14 : 44 25 been selected, I certainly want to thank you for your service.

Jury Selection

14 : 44 1 Hopefully, you have gained a bit of an insight into how the
2 system works in your short visit with us.

14 : 45 3 This now completes this portion of your jury
4 service, but don't forget, you need to check on the telephone
5 to see if there are any other assignments. Thank you and good
6 afternoon. You may leave the building.

7 *(Venire panel departs)*

8 THE COURT: Ladies and gentlemen, please stand, raise
9 your right hand and take the jurors' oath.

14 : 45 10 *(Juror panel sworn)*

11 THE COURT: Ladies and gentlemen, I'm sure the first
12 thing on your mind is how long are you going to be with us. We
13 estimate the case will take us into next week, but, again, they
14 are on the clock. That's all I can promise to you. When the
15 time is up, I have allocated what I think is a reasonable time
16 and after that time, they sit down. Each day they will get a
17 printout. You will see me keeping notes on this yellow sheet.

18 This is another criminal case that took a lot
19 longer -- will be taking a lot longer than this one. These are
20 what they look out. They will get a printout every day to the
21 minute as to how much time they have used. When the time is
22 up, they sit down and that's it. Okay. So that's the best I
23 can do at this point. I have analyzed the case and so have
24 they and they have a certain amount of time.

14 : 46 25 We operate on the following schedule. We begin

Jury Selection

14 : 46 1 at 10:00 a.m. in the morning and we adjourn at 6:00 p.m. in the
2 afternoon.

14 : 47 3 The only difference is that on Tuesday, tomorrow,
4 we begin at 11:30, okay, instead of 10:00 a.m. And go until
5 6:00 p.m. in the evening. Aside from that, we are 10:00 to
6 6:00 every day, except for Tuesdays when we begin at 11:30.

14 : 47 7 We also take a break mid-morning and
8 mid-afternoon. Basically, you can count on us taking a break
9 every hour and a half as the time goes along. The only
10 definite time is the starting time. We try to get underway
11 right at that point. Again, if anybody needs to take a break,
12 the attorneys -- if you are up, if you are doing the direct
13 examination or cross-examination, the parties, the witnesses,
14 what is it, the jury, if anybody needs to take a break at any
15 time, let me know. We can always take a 10-minute break. No
16 big deal. Okay. So we will leave that up to you.

14 : 48 17 And if you have any special dietary needs -- I
18 think one juror may or may not have -- you are free to have a
19 snack while you are in the jury box. I know we had years ago,
20 what was it, Mr. James, on a case that lasted a lot longer than
21 this. He had a back problem, so we put him on the end and
22 Mr. James, when he felt he had to stretch, got up and paced
23 back and forth and retook his seat. We will get everything
24 done.

14 : 48 25 Also, a little bit of a background, in the

Jury Selection

14 : 48 1 Stanford case, we had 14 jurors but at the last minute, they
2 decided they wanted 15 jurors, so if anybody got sick or
3 whatever. So we didn't have time to put an extra couple seats
4 in the jury box. We got a La-Z-Boy and stuck it right there on
5 the end. We can be flexible and we want to do what will help
6 the jury as it goes around. That's all right though. We gave
7 the first guy -- he could sit there and if he didn't like being
8 in the La-Z-Boy after the first day, what we would arrange is a
9 juror would move one seat each day. After he got through that
14 : 48 10 first day, he stayed there the whole time.

11 Let's see. Also, you will note that there are 14
12 of you in the jury box. This case will be decided by 12 of
13 you. However, with the agreement of the attorneys, we do it
14 this way. Everybody is a fully-qualified juror. No one is
14 : 49 15 designated right now as an alternate just because you are
16 sitting in a certain seat.

17 At the end of the case, after I have given you
18 the instruction and the attorneys have summed up, all 14 names
19 will be put in a box, and Ellen will walk over to one of the
20 jurors who will reach in and pull two names at random. So that
21 way, you are all fully qualified, and you won't know who the
22 alternates are until the very last minute. And it is not
23 because you are sitting in a certain seat that you are an
24 alternate and you won't deliberate because you know you are in
25 that category. It will be decided by 12 jurors, but we won't

Jury Selection

14 : 50 1 know that until the very end, just before you walk in to start
2 deliberating.

14 : 50 3 I do permit you to take notes but keep in mind,
4 if I want anything read back, I'm going to ask the court
5 reporter and not for your notes. Your notes are only secondary
6 to your own recollection. Always rely on your own
7 recollection, but certainly you may use the notes for what
8 purpose you feel is proper. You are free to take notes in this
9 case.

14 : 50 10 I think I mentioned to you, if there is a finding
11 of guilty -- and we don't know. If there is, again, it is
12 solely the province of the judge relative to any kind of a
13 sentence. Although when you get back to deliberate after the
14 case is over, I will come back and tell you all of that if you
15 have an interest. Because we will sit and talk for at least an
16 hour after each case and go over my notes and your questions.

14 : 51 17 You have taken an oath which states you are going
18 to decide this case based upon the evidence and the evidence
19 alone. I want to talk to you about that at this time. First
20 of all, we don't want you to decide who you like and dislike
21 and decide the case accordingly. Therefore, you will have no
22 contact with anyone related to the case, including attorneys,
23 parties or witnesses. Of course, you may say good morning or
24 good afternoon to them as you pass them in the hall, but you
25 may say nothing further.

Jury Selection

15 If you have any problem during the course of the
16 trial, please let a member of the staff know. Should you be
17 delayed in arriving at the courtroom for any reason, you need
18 to give us a call because we can't do anything without all 14
19 of you here. If you have a medical emergency, a car breakdown
20 or something, give us a call during your first break. Ellen
21 will give you all of that information.

22 If at any time you can't hear, let me know.
23 Raise your hand, say, Could you speak up? And I will have the
24 witness speak up and/or pull that microphone in closer.

25 When you return from each break -- when we take a

Jury Selection

14 : 52 1 break, you will be in the jury room. If it is for two or three
2 minutes, you will be in there. We will be doing things. I
3 will note down what it is and the clock will be going. If we
4 take our ordinary breaks or it is going to last a little
14 : 53 5 longer, when you get through with your break, you reassemble in
6 the jury room and then you come back in and take the same
7 places you are in now. Ellen will, the first time, line
8 everybody up in the sequence you are in now. Everybody remain
9 standing until everybody is in place and then we will all be
14 : 53 10 seated at the same time.

11 Also, as you are aware, the federal courthouse is
12 a smoke-free facility and certainly you are free to smoke,
13 should you desire, outside the building during any of the
14 extended breaks.

14 : 53 15 Keep in mind if you would that, what is it, both
16 sides have waited a while to get to trial. When we're done,
17 like I'm done, I go to the next case. The attorneys are done,
18 they go on to their next case. You go home, go back to work
19 and so forth. But for the parties, the government and for the
20 defendants, this is their only day in court. This is it. And
21 that's what the whole system is about, a cross section of the
22 community listening to the facts and then deciding the facts
23 based upon the law that the judge lays out for you in the jury
24 charge.

14 : 54 25 I hope you are going to enjoy the case. I have

Jury Selection

1 found in all of my cases I learn something about different
2 aspects of human society in every single civil and criminal
3 case.

24 All right. The first thing we are going to do is
25 we have opening statements. And the clock is going on. An

Opening Statement by Mr. Armstrong

1 opening statement is nothing more than what the attorneys
2 anticipate the evidence will show. So if we get an objection,
3 I object, he is arguing his case, I will consider that to see
4 where the boundaries are, what they anticipate the evidence
5 will show. And keep in mind, there is never an obligation for
6 any defendant to take the stand, to put on any evidence or even
7 for the lawyers to ask questions, which I'm sure they will.
8 But that's the presumption of innocence. The presumption of
9 innocence never shifts. It is always on the government until
10 they prove, if they can, each element beyond a reasonable
11 doubt.

12 Now, we will start the clock. The government has
13 the burden of proof, so they go first, and then we will hear
14 from the defense.

15 I know you have requested, what, about 20 minutes
16 a side?

17 MR. ARMSTRONG: Yes, Judge.

18 THE COURT: Whatever you need, we will keep track of
19 the time.

20 Counsel, go right ahead.

21 MR. ARMSTRONG: Thank you, Judge.

22 THE COURT: Yes, sir.

23 MR. ARMSTRONG: Ladies and gentlemen, good afternoon.
24 You have before you two defendants in this case. The evidence
25 is going to show that these defendants were drug dealers. The

Opening Statement by Mr. Armstrong

1 only difference between these two defendants and the common,
2 familiar drug dealer on the street is that one defendant wore
3 scrubs and the other pretended to be the administrator of a
4 medical clinic.

5 So, who are these defendants? First is
6 Dr. Gazelle Craig. Dr. Craig is a physician here in Texas, and
7 she was the only physician at a supposed pain management clinic
8 called Gulfton. She had one job at Gulfton: To see patients
9 and write prescriptions. And, boy, was she good at her job.
10 In a little more than two and a half years, she wrote over
11 30,000 prescriptions for two drugs: Hydrocodone, an opioid, a
12 drug called carisoprodol, or Soma. It's a muscle relaxer.
13 Together, these two drugs are a dangerous drug cocktail. These
14 drugs taken together are abused to get high, and these drugs
15 are sold on the street for cash. Dr. Craig wrote prescription
16 after prescription after prescription for this dangerous drug
17 cocktail, and she did so for one reason: Cash. You are going
18 to see, she is a doctor in name only.

19 The other defendant is Shane Faithful.

20 Mr. Faithful, not a doctor, but he ran Gulfton. He set the
21 rules, and he charged each patient about \$300 to get this
22 prescription for these drugs. And he ran a tight ship. It was
23 his way or the highway. He cared about volume. He cared about
24 the number of patients coming in, the prescriptions going out
25 and the piles of cash stacking up. Together, these two

Opening Statement by Mr. Armstrong

1 defendants, these partners in crime, dumped millions, millions
2 of these drugs onto the streets of Houston. They didn't care
3 about the risks that these drugs posed to the patients. They
4 didn't care about the risks that these drugs posed to the
5 public. They cared about one thing: Lining their pockets with
6 cash.

7 Let's talk about their medical clinic. There was
8 absolutely nothing medical about it. It was a pill mill. It
9 was a front where they churned through patients, burned through
10 prescription pads and stacked up cash. You are going to see
11 their operations defied all common sense.

12 Each morning, the gates of Gulfton opened up
13 around 7:30, and the clinic was flooded with patients. Cars
14 were coming through like a drive-through McDonald's. Many
15 patients came to people called "facilitators." What is a
16 facilitator? It is just code, code for other drug dealers who
17 brought two, three, four, five patients to the clinic in the
18 morning, dropped them off, then took them prescriptions
19 afterwards.

20 Armed security guards roamed all around Gulfton,
21 and they enforced the defendant's rules, all of which were set
22 up to avoid getting busted.

23 Rule number one: No patient can have a cell
24 phone or even a book bag in the clinic. If you were caught on
25 your phone, you were thrown out. That rule, you will see, had

Opening Statement by Mr. Armstrong

15 : 01 1 one purpose, to make law enforcement's job harder. After all,
2 it's a lot harder to get busted for running a pill mill if you
3 aren't caught on tape doing it. But you are going to hear that
4 sometimes Dr. Craig, she bent the rules. If she caught a
15 : 01 5 patient on their phone, for example, she wouldn't throw them
6 out. She would just cut the prescription. She would just
7 prescribe them fewer opioids as punishment. Absolute craziness
8 and not even close to real medicine.

9 Rule number two: You had to have something
15 : 02 10 called DPS history. Long story short, DPS history is just some
11 record that some other doctor at some point prescribed you
12 these drugs. You will see how defendants used this DPS history
13 to cover their tracks, to weed out the obvious addicts, the
14 people who would draw the attention of law enforcement.

15 Rule number three: Patients had to pay up. Each
16 patient had to pay about \$300 to get this dangerous drug
17 cocktail from Dr. Craig, but there was one catch. You had to
18 pay cash. No credit card. No insurance. Cash only.

19 You are going to hear, you are going to see that
15 : 03 20 many patients didn't even pay for themselves. The facilitators
21 would pay upfront for two, three, four, five patients all at
22 the same time and take the prescriptions afterwards to do with
23 it what they wanted.

24 Let's talk about the medical visit, the medical
15 : 03 25 part of the patients. Upwards of 60 patients were crammed into

Opening Statement by Mr. Armstrong

15 : 03 1 the waiting room, filling out questionnaires.

2 2 Are you in pain? Yes, of course, I am. Have you
3 3 been in pain for a long time? A very long time. What makes
4 4 your pain feel better? Medications. What makes your pain feel
5 5 worse? Medications.

6 6 Then the patients were called into the exam room
7 7 for some follow-up, for a quick exam: Does it hurt here? Oh,
8 8 yes, of course. How about there? Yes, absolutely. Can you
9 9 touch your toes for me? And then in strolls Dr. Craig.

15 : 04 10 You are going to see that Dr. Craig spent as
11 11 little as 45 seconds with patients before prescribing this
12 12 dangerous drug cocktail. Forty-five seconds, not even close to
13 13 real medicine. Each day this process repeated itself, over and
14 14 over and over again. Each day upwards of 60 patients come to
15 15 the clinic, paid in cash. Each day, upwards of 60 patients got
16 16 this dangerous drug cocktail. And each day, Dr. Craig writes
17 17 all of these different patients the same prescription for the
18 18 same two drugs.

15 : 05 19 Ladies and gentlemen, the defendants' business
20 20 was booming. With the help of facilitators, their waiting room
21 21 was at maximum capacity, and there was a line out the door to
22 22 get in. Defendants were stuffing their pockets with 20 bills,
23 23 \$100 bills, up to \$20,000 a day, a day.

24 24 At the end of the day, they took all the cash,
25 25 and they would divide it 50/50, pay a few expenses, 1,000 bucks

Opening Statement by Mr. Armstrong

15 : 06 1 here, 1,000 bucks there, one cash envelope for Dr. Craig, one
2 cash envelope for Shane Faithful. Let's do it again tomorrow.

3 Ladies and gentlemen, that's a very high level
4 overview of the case, the evidence that you are going to hear.

15 : 06 5 How are we going to prove it to you? In a number
6 of ways. First, you are going to hear from witnesses. You are
7 going to hear from an insider, the office manager and she is
8 going to give you that insider's view of the defendants'
9 illegal pill mill.

15 : 06 10 You are going to hear from two individuals who
11 posed as patients. Each paid about \$300 cash; each got the
12 same prescription. Both were treated more like customers than
13 actual patients.

14 You are going to hear from a real doctor, an
15 expert in pain management, and he is going to talk about
16 something called the standard of care. The standard of care is
17 just basic requirements, something that all doctors have to
18 follow before prescribing these dangerous drugs. Common sense
19 requirements such as: Make sure that you get the records about
20 the patient's condition and their prior treatment and prior
21 medical history before you prescribe these dangerous drugs and
22 let's try something else that is less dangerous than opioids.
23 Let's do yoga, swimming, physical therapy, stretching, weights.
24 You name it. Don't just dive off the deep end of opioid
25 treatment. He is going to tell you Dr. Craig didn't even come

Opening Statement by Mr. Armstrong

15 : 07 1 close to practicing medicine.

2 What else are you going to see? You are going to
3 see documents. Agents searched three locations in this case.
4 They searched the clinic. They searched the house of
15 : 08 5 Mr. Faithful and they searched the house of Dr. Craig. At each
6 location they found documents and they found piles of cash.
7 You are going to see the defendants' fingerprints are all over
8 the pill mill.

9 You are also going to see patient files. The
15 : 08 10 patient files just give the appearance of actual medical work
11 and medical treatment.

12 You will also hear recordings, audio and visual.
13 You will see firsthand the patients flooding into the clinic
14 and the cars coming through like a drive-through. And you are
15 : 08 15 going to see the seconds, the seconds, that Dr. Craig spent
16 with patients before prescribing these dangerous drugs.

17 You are also going to see the prescriptions
18 themselves. You are going to see the 13,000 or so
19 prescriptions for the muscle relaxer and about 18,000
20 prescriptions for hydrocodone. Together, those prescriptions
21 added up to about a few million pills.

22 You are going to see that Dr. Craig
23 wrote 99 percent of all her prescriptions of that dangerous
24 drug cocktail; how that's the hallmark, the hallmark, the
25 shining star of a pill mill.

Opening Statement by Mr. Armstrong

1 You are also going to hear from two people called
2 confidential human sources. A confidential human source is
3 just someone who worked with DEA and assisted in their
4 investigation. The first confidential human source is the
5 office worker, the insider. She initially worked with DEA and
6 gave them information, and she was paid for that information.
7 She also stands in line to receive a reward, up to \$40,000 for
8 that information. How much she gets, not guaranteed. Whether
9 she gets a reward, not guaranteed. But what is guaranteed is
10 that whatever award she gets is separate and independent from
11 what happens in this case.

12 You are also going to hear from a confidential
13 human source who made some recordings in this case, and he did
14 so because he got busted for running his own pill mill and he
15 started working with DEA for a chance, a chance at a lighter
16 sentence.

22 Thank you.

23 THE COURT: All right. Defense, please?

For your information, you used 14 minutes.

25 || MR. ARMSTRONG: Thank you, Judge.

Opening Statement by Mr. Williams

15:11 1 MR. WILLIAMS: Ladies and gentlemen of the jury, what
2 you are about to hear is how the government does business once
3 they target you for criminal investigation. We believe the
4 evidence will show that in April of 2015, DEA agents targeted
5 the clinic that was run by my client Shane Faithful and
6 Dr. Gazelle Craig.

7 They received a tip that something was going on
8 wrong. Okay? Now, thereafter, they came out to the particular
9 clinic. I believe that was in September 2015. They came out
15:12 10 to the clinic. These two investigators right here,
11 Investigator Mills and Investigator Gainer, along with people
12 from the Texas Medical Board. They came out to question what
13 was going on in the particular clinic.

14 After speaking to Shane Faithful, they concluded
15 that what he was telling them was not correct. They spoke to
16 Dr. Craig and decided, well, let's run what we call a
17 prescription history showing how many scripts were written in a
18 particular period of time. That particular history was run,
19 and they discovered that approximately 3,000 dosages -- I'm
20 sorry -- 300,000 dosages of hydrocodone had been prescribed
21 over a six-month period of time. That period of time being
22 from January 2015 until approximately end of May 2015.

23 Once they received that particular investigation,
24 when they came out to talk to them, they requested certain
15:13 25 files, which Dr. Craig gave them particular files. You will

Opening Statement by Mr. Williams

15 : 13 1 see after that from that particular time, from September
2 of 2015 until approximately October of 2016, very little
3 happened. Mind you, when they came out in September of 2015,
4 they came out to just do an investigation and to look at the
5 particular records. They looked at those particular records.

15 : 14 6 Now, mind you, these are what they call the
7 diversion agents, DEA Diversion. Their job is to make sure
8 drugs don't hit the streets illegally. But for a whole year,
9 nothing happened. Nothing happened. They subpoenaed some bank
10 records, got some records regarding the clinic. They did very
11 little. Very little.

12 Then in December 2016, they received a phone call
13 from a person posing to be somebody that they were not. That
14 person end up being Lorin Phillips.

15 : 14 15 Now, he talked about insider information. Loren
16 Phillips, she was the person that assisted Shane Faithful for
17 some eight months before he decided to allow her to work in the
18 particular clinic. From the best of the records I have seen,
19 she started working in April and May of 2016 and she worked
20 there the whole particular time, okay, from May of 2016 until
21 December of 2016.

15 : 15 22 During that particular time, Mr. Faithful had
23 problems with her. She was insubordinate. Okay. He found out
24 she was doing things against the clinic's policies, things like
25 dealing with these facilitators that we just heard about.

Opening Statement by Mr. Williams

15 : 15 1 Now, we believe the evidence will show that once
2 she called DEA in December of 2016 posing to be somebody else,
3 she met with DEA one time in February of 2017.

15 : 15 4 Now, March 1st, 2017, she comes in and signs an
5 agreement with DEA. That was signed by this agent here,
6 Mr. Gainer, and his supervisor, to become a paid informant to
7 provide information.

15 : 16 8 Now, mind you the date that she left, she took
9 with her several documents. She stole the particular documents
10 out of the particular clinic. She kept them in her possession.
11 Didn't tell DEA nothing about that. Now, after she met with
12 them in what we call an initial debriefing -- a debriefing is
13 simply where you sit down with the government and tell them
14 everything you know about everything they ask you. She signs
15 her agreement. She meets with them a second time and gives
16 them information. On the 22nd of March, 2017, she allegedly
17 brings documents to DEA. She brings documents to DEA.

15 : 17 18 Now, you will find nowhere in the DEA records,
19 which they keep records of every time you talk to them -- they
20 prepare what we call a DEA6. What that is is a memorial of
21 what we talked about while we were there. You will find
22 nothing in their records where she produced records to them.
23 Nothing, but you will find that on the same date, there is a
24 document whereby DEA paid her \$3,000. They paid her \$3,000.

15 : 17 25 Now, I believe the evidence will show and

Opening Statement by Mr. Williams

15 : 17 1 testimony from this particular witness stand that once she
2 brought these documents, they told her, Well, they are loose
3 documents. Go put them on a thumb drive and bring the drive
4 back to us. Okay? Nowhere in anything the DEA has will it
15 : 17 5 show there is a record of these particular documents.

6 I believe the testimony is going to show from
7 these particular agents that she brought the thumb drive in. I
8 believe the evidence is going to show that they took the
9 evidence, downloaded the thumb drive and miraculously gave the
15 : 18 10 thumb drive back to the person who brought it without
11 documenting anything.

12 I believe the evidence will show that in June she
13 produced other documents. Okay? Another thumb drive. I
14 believe that evidence is going to come from this particular
15 agency. You will see nowhere in the DEA6s where they had noted
16 any of this evidence. I believe the evidence is going to come
17 from Diversion Agent Mills that once she produced the first
18 thumb drive, then she turns around and brings the loose
19 documents back. I haven't figured that out. I still haven't.

15 : 19 20 Now, there were certain protocols in place with
21 the particular clinic. One of them -- one of the particular
22 rules were you have to check DPS records to see if there was a
23 prescribing history before you can even prescribe these drugs.
24 You will hear from their expert that --

25 THE COURT: Speak up a bit, Counsel. You don't need

Opening Statement by Mr. Williams

15 : 19 1 the microphone but just speak up a little bit.

2 2 MR. WILLIAMS: Yes, sir.

3 3 You will hear that these protocols are set up and
4 you will hear the expert tell you these protocols are set up to
5 make sure that patients aren't doctor shopping and patients
6 aren't getting prescriptions too soon.

7 7 February 17, DEA sends undercover persons into
8 the clinic attempting to get prescriptions. Both of these
9 particular people were turned away because the protocol that
15 : 20 10 they had set in place at the clinic worked. They turned them
11 away.

12 12 March of the same year, they decided, let's go
13 get Davis Webster. Now, Davis Webster is the convicted felon
14 he is talking about. Davis Webster has pled guilty in this
15 same courthouse of being involved with an illegal pain clinic.
16 The evidence will show that Davis Webster has been a
17 confidential informant for DEA since 2006. They used him on
18 several occasions. So they had to go get the best people that
19 they had to come in and try to infiltrate this particular pain
20 clinic because the two people they had before couldn't get the
21 scripts because the protocol was set up to prevent people
22 getting scripts that weren't eligible to get the particular
23 prescriptions.

24 24 Now, the evidence will show he goes in in
15 : 21 25 March 2017. Because of his experience in dealing with these

Opening Statement by Mr. Williams

15 : 21 1 particular matters, he was able to convince Dr. Craig to write
2 a script for him. Okay? He put all of the modalities down
3 which fit a person who actually needed these particular
4 scripts, and she wrote him a legitimate script. He takes the
15 : 21 5 script and turns it over to him.

6 Now, his stake in this outcome is he is in the
7 federal penitentiary. He will tell you from the witness stand
8 that he is cooperating in an effort --

9 THE COURT: I can't hear you, sir.

15 : 21 10 MR. WILLIAMS: He is cooperating in an effort to
11 reduce the time that he is looking at. Okay? Mind you, he
12 pled guilty in November of 2016. He is still awaiting
13 sentencing right now. What he does for them will determine
14 what his sentence is going to be. He is going to come in and
15 tell you, well, I'm not promised anything. I'm just promising
16 to tell the truth. But if you look at the evidence
17 objectively, the only reason he is doing this is because he is
18 a convicted felon attempting to reduce the time that his judge
19 will potentially give him at his sentencing. His sentencing
15 : 22 20 will be set sometime after he testifies.

21 Now, after he made the recording in March, he
22 goes back in May. Okay? This time, though, when he goes back,
23 he has to bring x-rays to verify his injuries and everything
24 else. And he goes back, brings the x-ray and gets another
15 : 22 25 prescription.

Opening Statement by Mr. Williams

1 The next month they sent in another diversion
2 officer who is with the task force. Her name is Tanya Graham.
3 You will hear evidence from her that she went in wired with
4 cameras to get a prescription from Dr. Craig. She was
5 successful in getting a prescription. What you hear from this
6 evidence is that three times they went in and couldn't get
7 scripts and three times they did get scripts. So obviously the
8 protocol that is there is working.

9 Now, the government finally decides, well, let's
10 file charges. I think we have got enough evidence to file
11 charges. July 10, 2017, they run search warrants on the clinic
12 and they run search warrants on Dr. Craig's residence and
13 Mr. Faithful's residence. They seized items from there, and
14 they take the items that they paid for from Loren Phillips.
15 And that's the particular evidence that they want you to rely
16 upon in convicting these two individuals here.

Opening Statement by Mr. Williams

15 : 24 1 So what happens? A paid informant, Lorin
2 Phillips, who knows these people, was going to inform them
3 about what was going on in the clinic: This is wrong, this is
4 wrong, this is wrong.

15 : 25 5 Okay. Now, when they speak to Olivia Caldwell
6 and Shemetra Morgan again in October, now their stories change.
7 They made tapes of those particular stories and particular
8 interviews.

15 : 25 9 Now, you will hear evidence from these
10 investigators that most of the time when you do interviews, you
11 don't record them. You don't record them. You just take notes
12 and what we thought they said. Now, if you use your common
13 sense, you will be able to know if you really want to know what
14 somebody said in the days of automation that we have here, all
15 you have got to do is pull your phone out. You can record
16 anytime, anywhere that you want, but you are not going to have
17 those. And they do that in order to give you what their
18 interpretation is of what a person says.

15 : 26 19 Now, what you won't have here is evidence from
20 interviews of any of these people who got these scripts other
21 than Webster Davis and Tonya Graham, who is an agent. They
22 didn't get scripts. The so-called insiders that Mr. Armstrong
23 is referring to will tell you, a lot of these people appeared
24 to be needing these scripts. Okay. All right. You will hear
25 evidence that they set up surveillance on this particular

Opening Statement by Mr. Williams

15 : 26 1 clinic on several different occasions, taking license plate
2 numbers, helicopters following people from the clinic,
3 elsewhere. Okay. But they never arrest anybody because their
4 focus was never on anybody but these particular people here.

15 : 26 5 You will hear evidence from these so-called
6 insiders about how they manipulated the facilitators for their
7 own gain. They'll tell you they interviewed them. They will
8 tell you, oh, I knew this guy, I knew this guy, these were the
9 facilitators. But the problem you will have with all of this
15 : 27 10 is while they were working there, nobody called them. Lorin
11 Phillips is going to tell you she called these people the day
12 she was forced out of the clinic for insubordination. You will
13 hear a tape that was allegedly made by Ms. Olivia Caldwell in a
14 meeting when Shane Faithful is talking to the clinic about,
15 you're not doing your jobs and if you are not doing your jobs,
16 we are going to have to get rid of you. You will hear evidence
17 from all of the particular people in there that nothing was
18 wrong. And then after they got poisoned by Lorin Phillips, now
19 they want to become witnesses.

15 : 27 20 I will submit to you that you will hear expert
21 testimony from Graves Owens. Mr. Owens is a paid expert from
22 the government. That's all he does. You will hear evidence
23 from him that he is an ex-anesthesiologist who ran a pain
24 clinic. The problem we are going to have with him is he hasn't
25 practiced medicine in five years. They will tell you all he

Opening Statement by Mr. Williams

15 : 28 1 does is goes around and testifies for the government in cases,
2 saying how bad these opioids are. And even worse, he will tell
3 you he looks at patient charts and tells you what she is doing
4 wrong. However, he didn't interview any particular patient.

15 : 28 5 It is real easy to play Monday morning quarterback. On Sunday,
6 we just go back and look at the film and say, We didn't do this
7 correct. But the problem with any of y'all, you all need to
8 check your paper as a doctor and I haven't seen you personally.
9 This is the evidence that the government is going to present to
15 : 29 10 you.

11 And then I anticipate you will hear from these
12 particular agents. You will hear about what they did. And I
13 anticipate them telling you that everything they did, they had
14 to do it because they had to get to these people.

15 15 Think about it. This case is going to turn upon
16 the evidence of paid informants, convicted felons and
17 disgruntled employees. The evidence they will present to you
18 is not going to rise to the level that we use that the judge
19 told you about in voir dire, beyond a reasonable doubt.

15 : 29 20 After you hear this evidence, you will have
21 plenty of doubt all over this evidence, and we are going to ask
22 you to find Shane Faithful not guilty.

23 THE COURT: Counsel?

24 MR. LEWIS: Judge, if I could use the podium, I would
15 : 30 25 like to use the podium. Is it okay if I stand over there?

Opening Statement by Mr. Lewis

15 : 30 1 THE COURT: I will tell you this: That you have used
1 2 18, almost 19 minutes.

3 MR. WILLIAMS: That's fine. I had 20.

4 4 MR. LEWIS: I'm going to be a little shorter than
15 : 30 5 that.

6 6 *(Off the record discussion held)*

7 7 THE COURT: By the way, you will see that some of the
8 8 attorneys may sit when they examine witnesses. Some of them
9 9 may stand. Some of them use the podium. Historically in
10 10 federal court, everybody uses a podium and some judges have a
11 11 rule, you can't get more than one arm's length away from the
12 12 podium.

13 13 As far as I'm concerned, they can sit like they
14 14 do in state court. They can stand at their place. They can
15 15 move up and back or use the podium. Whatever their preference
16 16 is is fine.

17 17 Counsel, it's all yours. I stopped the clock
18 18 for 30 seconds. Go on.

19 19 MR. LEWIS: As I told you earlier during the voir dire
20 20 process, my name is Don Lewis, and I represent Gazelle Craig in
21 21 this case, who is the medical doctor that is being accused in
22 22 this case.

23 23 Let me start out by saying this: I hope that all
24 24 of you as jurors today remember every word that Mr. Armstrong
25 25 stated, everything that he represented to you. Because the

Opening Statement by Mr. Lewis

15 : 32 1 judge has told you -- and you will know again in this case --
2 that this case is about proof. It's not about conjecture.
3 It's not about idle words. And Mr. Armstrong, remember what he
4 said as it relates to the activities for Dr. Craig, for
5 Mr. Faithful, for the clinic, for the drugs, for the report,
6 and for the activities that brings us into court today
7 regarding Gulfton Community Health Center.

15 : 33 8 The evidence will show that Dr. Craig is a
9 licensed physician in the state of Texas and she was only one
10 of the medical providers at Gulfton Community Health Center.
11 They had other health providers there that are referred to as
12 mid-level health providers. You probably have heard of
13 physician assistants. You probably have heard of nurse
14 practitioners. Both of these individuals also issue
15 prescriptions in treatment of patients. She was not the only
16 doctor that was connected to Gulfton Community Health Center.

15 : 34 17 As part of treating the patients at Gulfton,
18 remember what Mr. Armstrong said. He said she only prescribed
19 two drugs. She issued prescriptions for controlled substances
20 and noncontrolled substances in treating these patients. Both
21 the controlled and the noncontrolled substances have been
22 determined by the FDA, the CDC, the manufacturers for treating
23 the patient's condition that she determined that this patient
24 was suffering from. These are all recognized authorities that
25 health providers use to determine what type of medication you

Opening Statement by Mr. Lewis

15 : 34 1 are going to utilize in order to treat your patient.

2 She not only determined that these medications
3 were indicated for the patient's condition, she also determined
4 that these medications were medically necessary for the
5 patient's condition.

6 When Mr. Armstrong speaks of a pill mill, a pill
7 mill is a clinic where you come into the clinic, you pay money
8 after you see the doctor and you leave with prescriptions.

9 That's not what happened at Gulfton Community Health Center.

15 : 35 10 These individuals were examined. They were assessed. And they
11 were followed up or counseled regarding what was going on with
12 them medically that brought them to this clinic. Those things
13 are not characteristics of a pill mill. Those things are
14 characteristic of a clinic that is attempting to render
15 rational and necessary medical treatment.

16 The evidence will show that as medical director
17 for Gulfton, Dr. Craig implemented clinical protocols to screen
18 individuals that were seeking medication for the purposes of
19 abuse or diversion. You just heard Mr. Williams tell you the
20 attempts that were made at this clinic that were unsuccessful,
21 and they were unsuccessful in large part because Dr. Craig had
22 protocols in place that if individuals did not satisfy certain
23 things about their requests for treatment, they were not even
24 seen by the doctor. In fact, you will hear one of the
25 individuals that did not get medication that was sent in by the

Opening Statement by Mr. Lewis

15 : 37 1 government to get medication, Dr. Craig told this individual,
2 No, I cannot treat you. If you -- because you don't have the
3 criteria to satisfy the protocol, you need to seek care
4 somewhere else. Will a pill mill do that? A pill mill is
5 about making as much money as you can for whoever wants to give
6 it to you.

7 There would be no reason to do that if you are a
8 pill mill. She made a rational referral to this patient and
9 said, I can't help you; maybe someone else can.

15 : 38 10 The evidence will show that that happened at
11 Gulfton. That that happened more than once. In fact, it
12 screened hundreds of individuals from receiving treatment and
13 care from Gulfton.

14 The evidence will show that Dr. Craig performed
15 appropriate physical assessments, lumbar and musculoskeletal
16 examinations and neurological examinations for patients at
17 Gulfton in order to arrive at a forensic diagnosis for each
18 patient she treated. You will hear these terms again because
19 the government's expert, Dr. Graves Owen, is going to bring
20 these things up about what is the appropriate things that a
21 provider must do within the standard of care in order to treat
22 a patient that is complaining of issues related to chronic
23 pain.

24 One of the reports that I expect that the
15 : 39 25 government will tender into evidence will have these things in

Opening Statement by Mr. Lewis

15 : 39 1 Dr. Owen's report as things that he used in order to determine
2 if the standard of care is being met as it relates to patients.

15 : 39 3 The evidence will show, as Mr. Williams has said,
4 at least three informants, undercover agents attempted to come
5 into Gulfton to obtain medication, and they were turned down.
6 And these are people that know what to say. They know how to
7 do it. But they could not get treatment because the protocols
8 and the other safeguards were in place at this clinic that
9 prevented them from getting care. We have record of that. And
15 : 40 10 the failure of them to obtain prescriptions from Dr. Craig is
11 persuasive evidence that this clinic did not act as a pill mill
12 because that's not what pill mills do. They don't go out of
13 their way not to make money.

15 : 40 14 One of the things that was said -- and I will
15 submit to you as it relates to Dr. Owens, what Mr. Armstrong
16 said, he is a real doctor. He's not like Dr. Craig. He's a
17 real doctor. I'm not sure what that means because Dr. Owens
18 doesn't have a medical practice. He hadn't operated a medical
19 practice for some time now. Dr. Owens based his opinion solely
20 on review of the records. As Mr. Williams stated, he is a
21 Monday morning quarterback. And very important, Dr. Owens is
22 getting paid for his testimony. And I'm not saying that
23 disqualifies him as a witness, but as a juror, it certainly
24 should put in your mind whether or not him getting paid has a
25 potential effect on his motive and also his potential bias.

Opening Statement by Mr. Lewis

1 The evidence will show in addition to medication
2 management at Gulfton Community Health Center, other treatments
3 were utilized for treating these patients; massage therapy,
4 patient education, stretching and exercise and referrals to
5 chiropractic care. And this is all documented in the medical
6 records that you will review. The uses of any of those is not
7 consistent of a clinic being a pill mill.

8 As Mr. Williams has stated, you are going to hear
9 evidence from the government and the government's witnesses
10 that should give you some pause or some doubt in this case as
11 to whether or not this evidence is credible, whether or not
12 it's authentic.

21 There is no way that I can give you an overview
22 of all the things that you are getting ready to hear and all
23 the evidence that I believe that you will see that's lacking in
24 credibility, authenticity and trustworthiness.

25 After you have considered this incompetent and

Opening Statement by Mr. Lewis

15 : 44 1 flawed evidence, I assert that you will determine that
2 Dr. Craig did not commit the offenses for which she is charged
3 and return a verdict of not guilty.

4 Thank you.

15 : 44 5 THE COURT: Ladies and gentlemen, we have been in
6 session -- we said we would get back in about 2:30. We got in
7 and were doing matters out here. It is now about 3:45.

8 Do you want to take a break now or go right on to
9 the first witness and we will go on for about another half
15 : 44 10 hour? You call it.

11 A JUROR: Keep going.

12 THE COURT: Got it. Call your first witness.

13 MR. HELFMEYER: United States calls Special Agent
14 Tonya Graham.

15 MR. WILLIAMS: May we invoke the Rule?

16 THE COURT: Yes. As soon as the witness comes in.

17 MR. WILLIAMS: May we approach briefly?

18 THE COURT: All right. Come on up.

19 (*At the bench*)

15 : 45 20 THE COURT: Yes?

21 MR. WILLIAMS: Just for the record, I would like to
22 invoke the challenge that I had --

23 THE COURT: Go on?

24 MR. WILLIAMS: -- the challenge that we gave on Friday
15 : 45 25 whereas two witnesses from the government are sitting at the

Opening Statement by Mr. Lewis

1 particular table. Judge, what we found out on Friday is it is
2 clear that they cover each other when the Rules are not
3 invoked. One agent testified to one thing and the other agent
4 came behind him and cleaned it up. Judge, we have a real
5 concern here with both of them sitting here, hearing each
6 other's testimony, being able to come back and talk to
7 witnesses.

8 THE COURT: Overruled.

9 MR. ARMSTRONG: We would also like to invoke the Rule
10 as to any potential defense witnesses.

11 MR. WILLIAMS: If they come in, I will notice them.

12 THE COURT: Thank you.

13 || (Open court)

14 THE COURT: Everyone who anticipates being called as a
15 witness in this case that's in the courtroom, please stand at
16 this time, anybody to be called as a witness in this case.

17 Raise your right hand and be sworn, please.

18 || *(Witnesses sworn)*

19 || THE COURT: I have made a ruling.

20 Ma'am, you can take your seat up here.

21 I have invoked what they call "the Rule." I have
22 stopped the clock, by the way. I don't go until you start
23 going. Okay. It is Rule concerning sequestration of
24 witnesses. Actually, the origin goes way back to biblical
25 times. I'm not a biblical scholar, but someone researched it.

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15 : 47 1 If you are interested, we will talk about it later. Okay? But
2 it means that everyone who is not a party to the lawsuit must
3 remain out in the hall and remain there until he or she is
4 called as a witness. And they are not to discuss the case with
5 anyone, and so forth, but they may discuss it with each other.
15 : 47 6 Okay. I have sworn in three witnesses. We have a witness on
7 the stand and I'm designating -- I've agreed to designate two
8 case agents to be the government's agents and also we have the
9 two defendants who are in.

15 : 47 10 Anybody else who comes in who will be testifying
11 will be put under the Rule. Either the attorneys will notify
12 them about it or I will actually swear them in and tell them.
13 So now everyone has been put under the Rule. I guess once you
14 are done, you will be released from the Rule, but they are not
15 to discuss this case with anyone; that they are under the Rule,
16 except they may only discuss it with any of the attorneys in
17 this case, and they can visit with each other until they
18 testify. The exemption is case agents who I'm -- I agreed to
19 designate both as government representatives and you have got
20 the two defendants.

15 : 48 21 So right now, we are ready to proceed with the
22 first witness. Go right ahead, sir.

23 23 MR. HELFMEYER: Thank you, Your Honor. For the
24 record, I just showed defense counsel Exhibits 319 and 361,
25 page four.

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15 : 48 1 TONYA GRAHAM, DULY SWORN, TESTIFIED:

2 DIRECT EXAMINATION

3 BY MR. HELFMEYER:

4 Q Good afternoon, ma'am. Would you please introduce yourself
15 : 48 5 to the jury?

6 A Good afternoon. My name is Tonya Graham.

7 Q What do you do for a living?

8 A I'm a special agent with Drug Enforcement Administration.

9 Q How long have you been doing that?

10 A Since August of 2002.

11 Q Any other law enforcement experience?

12 A Prior to DEA, I was a uniformed division officer with
13 United States Secret Service.

14 Q Did you do protection detail?

15 A Yes. For the President, Vice President, dignitaries.

16 Q How long were you with the Secret Service?

17 A Approximately three years.

18 Q In your current position in the Drug Enforcement
19 Administration, are you assigned to a squad?

15 : 49 20 A I'm assigned to the Tactical Diversion Squad.

21 Q What kind of cases do you investigate in the Tactical
22 Diversion Squad?

23 A We enforce the controlled substance laws of the United
24 States, but we emphasize pharmaceuticals, mainly opioids.

25 Q You said Tactical Diversion Squad. What is diversion?

Heifmeyer Direct of Tonya Graham

15 : 49 1 A Diversion is when drugs are prescribed to a person and that
2 person transfers the drugs to another person for illicit use.

3 Q And how does that happen?

15 : 49 4 A That happens where a person goes to a doctor. They are
5 prescribed drugs, prescriptions, drugs. They go to the
6 pharmacy. They get the prescriptions filled and they, in turn,
7 transfer the drugs over to a middle person, and then that
8 person sells them on the street.

15 : 50 9 Q As part of your work with DEA, do you investigate pill
10 mills?

11 A Yes, I do.

12 Q And what is a pill mill?

15 : 50 13 A A pill mill is a place where a doctor, inappropriately on a
14 daily basis, prescribes a high volume of powerful prescription
15 drugs for cash.

16 Q What kind of investigative tools does your squad have for
17 investigating diversion?

15 : 50 18 A Some of the tools we utilize are surveillance. We utilize
19 undercovers. We utilize database checks, data analysis and
20 open source checks.

21 THE COURT: What is open source checks?

22 THE WITNESS: Open source, such as we will do a Google
23 check or something like that, or the driver's license.

24 THE COURT: Okay.

15 : 50 25 BY MR. HEIFMEYER:

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15:50 1 Q Who are the subjects of your investigations with DEA?

2 A With DEA, we investigate doctors, nurse practitioners,
3 physician assistants, clinic owners, clinics, pharmacies and
4 pharmacy owners.

15:51 5 Q In this case, what was the name of the clinic that you and
6 your squad were investigating?

7 A Gulfton.

8 Q Generally, what part of Houston is that in?

9 A 59 and the Hillcroft area.

15:51 10 Q And that is in Houston, Texas?

11 A Yes, sir.

12 Q What was your involvement in this case, in the
13 investigation?

14 A My involvement in the investigation, I was an undercover
15 agent.

16 Q Are you familiar with the surveillance that your squad used
17 against Gulfton?

18 A Yes.

19 Q What kind of surveillance did you use?

15:51 20 A It's electronic surveillance, also known as a pole camera.

21 THE COURT: A what camera?

22 THE WITNESS: A pole camera.

23 THE COURT: Pole camera?

24 THE WITNESS: Yes, Your Honor.

15:51 25 THE COURT: That's a camera up on a pole, literally?

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1 THE WITNESS: Yes. It can be on a pole, Yes, Your
2 Honor.

3 | *BY MR. HELFMEYER:*

4 Q As part of your team's investigation into the Gulfton
5 Clinic, you installed a pole camera?

6 A Yes.

7 Q I would like to play a few clips from the pole camera for
8 the jury if we can lower the lights. For the record, we are
9 playing Government's Exhibit 507.

10 Special Agent Graham, what is the date on this
11 recording?

12 THE COURT: Is that -- I will tell you what. Let's
13 get the other set of lights off.

14 (A videotape, Government's Exhibit Number 507, was played.)

15 | BY MR. HELFMEYER:

16 Q What is the jury looking at?

17 A They're looking at a side view of the Gulfton Medical
18 Clinic on the date of June 19, 2017.

19 Q What time is that?

20 | A 7:26 a.m.

21 Q We are going to back it up a second. What is the jury
22 going to see?

23 || A The jury --

24 MR. WILLIAMS: Objection, Judge. The jury will be
25 able to see it for themselves. She doesn't have to testify

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15 : 52 1 to what they see.

2 THE COURT: Overruled. By the way, the final
3 interpretation of video or audio or transcripts is strictly up
4 to the jury, if you agree that that is what it shows, but I
5 will allow them to describe to you what they feel it is in
6 their experience. You were there -- were you there? You were
7 involved in getting that pole camera put in?

8 THE WITNESS: I observed the footage, Your Honor.

9 THE COURT: All right. Go on.

15 : 53 10 *BY MR. HELFMEYER:*

11 Q What is the jury going to see?

12 A The jury is going to see the gate open, and there is going
13 to be an influx, a high volume of people, foot traffic and
14 vehicle traffic.

15 Q What time was this starting?

16 A 7:25 a.m.

17 Q During your investigation, did you learn what time Gulfton
18 opened?

19 A Yes, at approximately 7:30 a.m.

15 : 53 20 Q What is the jury looking at right now, if you can explain
21 for the record?

22 A The gate has just opened, and there is a large volume of
23 foot traffic and vehicular traffic entering into the parking
24 lot.

15 : 53 25 THE COURT: What time does it open in the morning?

Helfmeyer Direct of Tonya Graham

1 THE WITNESS: At approximately 7:30, Your Honor.

2 THE COURT: Okay. The gate has just opened; is that
3 correct?

4 THE WITNESS: Yes, Your Honor.

5 | *BY MR. HELFMEYER:*

6 Q What is the jury looking at right now?

7 A A 15-passenger van going inside the parking lot.

8 MR. HELFMEYER: I would like to move to Government's
9 Exhibit 508.

10 (A videotape, Government's Exhibit Number 508, was played)

11 THE COURT: I see the clock going back to the same
12 time in the morning.

13 || THE WITNESS: The time is 7:17 a.m.

14 THE COURT: On the next day? Or the same day?

15 || BY MR. HELFMEYER:

16 Q If you can read the date for the record.

17 A The date is June 29, 2017.

18 THE COURT: What do we see before then?

19 MR. HELFMEYER: The first date, Your Honor, what the
20 special agent testified to, is June 19th, 2017.

21 THE COURT: Okay. Go on.

22 || BY MR. HELEMAYER:

23 || 0 What is the jury going to see in this video?

24 A They are going to see the gate open and then people started
25 to line up around the fence. When the gate opened, the foot

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1 traffic and the vehicle traffic, there is going to be an influx
2 going into the parking lot.

3 Q Did you see multiple people get out of the car that was
4 parked in front of the gate right there?

5 A Yes.

6 Q What is the jury looking at?

7 A The jury is looking at a large volume of people going in in
8 vehicles, and then a person here looks like they are on some
9 type of walker or some type of assistance.

10 Q Have you been able to count the number of cars the jury has
11 seen driving through?

12 A There have been approximately 30 cars.

13 Q For the record, the video stopped. What time did it stop?

14 A 7:23 a.m.

15 MR. HELFMEYER: We are going to next play Government's
16 Exhibit 509.

17 *(A videotape, Government's Exhibit 509, was played)*

18 *BY MR. HELFMEYER:*

19 Q What is the date that Special Agent Gainer selected?

20 THE COURT: Pull the mic in, please.

21 MR. HELFMEYER: My apologies.

22 *BY MR. HELFMEYER:*

23 Q What is the date that Special Agent Gainer selected?

24 A July 7, 2017.

25 THE COURT: What is that? A week later?

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15 : 58 1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Approximately. All right. Go on.

3 *BY MR. HELFMEYER:*

4 Q What time is it?

15 : 59 5 A 7:31 a.m.

6 Q It looks like there is some glare on the video. Is that
7 what the jury is seeing?

8 A Yes. It is from the sun.

9 Q What else is the jury seeing right now?

15 : 59 10 A A high volume of vehicular traffic because the gate just
11 opened.

12 THE COURT: The gate had just opened. This time it
13 was 7:30? Is that correct?

14 THE WITNESS: Yes, Your Honor.

15 *BY MR. HELFMEYER:*

16 Q And what is the jury looking at right now on the right part
17 of the screen?

18 A There are people lined up on the sidewalk, and they are
19 walking into the parking lot.

16 : 01 20 Q The recording has stopped. Can you read the time into the
21 record?

22 A 7:36 a.m.

23 Q Were you able to count the number of cars that went in on
24 July 7?

16 : 01 25 A Yes. There was another approximately 30 vehicles.

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16 : 01 1 Q You testified earlier, Special Agent Graham, that one of
2 your roles in this investigation was to go undercover; is that
3 right?

4 A Yes.

16 : 01 5 Q What does it mean to go undercover?

6 A It means to go undercover as a law enforcement person
7 goes -- takes on a fictitious identity and goes undercover into
8 an organization to gather evidence.

9 THE COURT: Counsel, turn the lights back on? You
16 : 01 10 call it. Yes or no? Are you going to go on to more?

11 MR. HELFMEYER: I'm going to another one.

12 THE COURT: No problem. Just leave it the way it is.

13 *BY MR. HELFMEYER:*

14 Q I want to turn your attention to June 15 of 2017. Did you
16 : 01 15 visit Gulfton Clinic that day?

16 A Yes, I did.

17 Q Why did you go to Gulfton Clinic that day?

18 A I went there as an undercover agent.

19 Q What was the purpose of the visit?

16 : 01 20 A The purpose of the visit going undercover was to obtain a
21 prescription from Dr. Craig.

22 Q Did you take any recording devices with you?

23 A Yes, I did.

24 Q Audio, video or both?

16 : 02 25 A Both.

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1 Q Why did you take multiple recording devices?

2 A Multiple recording devices, for officer safety as well as
3 if the battery runs out, I still can record.

4 Q What time did you first arrive at Gulfton Clinic on June 15
5 of 2017?

6 A The first time I arrived was approximately 9:55 in the
7 morning.

8 Q And have you reviewed the video that captured your visit to
9 Gulfton?

10 A Yes.

11 Q Does it fairly and accurately depict your trip to Gulfton?

12 A Yes.

15 (A videotape, Government's Exhibit 503, was played)

16 || *BY MR. HELFMEYER:*

17 Q Special Agent Graham, if you can help instruct the jury as
18 to what they are looking at.

19 MR. HELFMEYER: Go ahead and push play, Ms. Mortezaei.

20 THE WITNESS: I have just parked the car. I'm getting
21 out. There are people sitting in vehicles, standing around
22 vehicles. You can smell marijuana in the air.

23 MR. WILLIAMS: Judge, objection. Nobody asked her
24 what she smelled.

25 THE COURT: Sustained. Go on.

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16 : 03 1 BY MR. HELFMEYER:

2 Q Special Agent Graham, where are you at this point?

3 A I'm in the back parking lot walking towards the front.

4 Q So the pole camera that we were looking at earlier would
16 : 03 5 have been to the right?

6 A Yes. That is my voice. I was calling out the license
7 plate of a black Corvette.

8 MR. WILLIAMS: Objection. Nonresponsive. Nobody
9 asked her a question.

16 : 04 10 THE COURT: Overruled. Go on.

11 BY MR. HELFMEYER:

12 Q For the record, the time stamp says 85838. You testified
13 you arrived around 9:55. Is the timestamp about an hour off?

14 A Yes, it is.

15 Q When you stepped out of your car and you were in the back
16 parking lot, did you notice any odors?

17 A Yes.

18 Q What odors did you notice?

19 A I smelled marijuana.

16 : 04 20 Q How do you know what marijuana smells like?

21 A It is a distinctive smell when you are smoking it as
22 opposed to it in the original form.

23 Q Did it smell like smoke or original form marijuana?

24 A Smoking.

16 : 04 25 Q What is the jury looking at right now?

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16 : 04 1 A I just walked into the clinic, into the building. There is
2 approximately 30 people in that open area. There's a line.
3 That's the door. There is people sitting on the floor, lying
4 on the floor, standing along the hallway, waiting.

16 : 05 5 Q When you opened the door in the video, I heard an oh. Who
6 was that?

7 A That was me. I was surprised. I didn't realize there were
8 that many people in there.

9 Q And you had said you read off the license plate of that
16 : 05 10 black Corvette. Why did you read off the license plate of
11 that --

12 MR. WILLIAMS: Objection. Leading.

13 THE COURT: Overruled.

14 *BY MR. HELFMEYER:*

16 : 05 15 Q Why did you read off the license plate?

16 A Based on our investigation, we knew that Shane Faithful
17 drove a black Corvette, and I was reading off the license plate
18 to surveillance personnel.

19 Q It looks like there is a sign in the doorway that the jury
20 is looking at right next to a gentleman. What does that sign
21 say?

22 A It says "No Cell Phones."

23 MR. HELFMEYER: The video is at 8:59:30, for the
24 record.

16 : 06 25 *BY MR. HELFMEYER:*

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16 : 06 1 Q There was a gentleman speaking at the door. Who was he?

2 A That was an armed security guy.

3 Q How do you know he was armed?

4 A I saw a weapon on his right side and he was in uniform.

16 : 06 5 Q What did he say?

6 A He said, "Have your IDs out and ready."

7 Q It looks like you turned around at that point. What
8 happened?

9 A Yes. Because I forgot my undercover ID in my purse.

16 : 07 10 MR. HELFMEYER: And I would like to fast forward, for
11 the record, to time stamp 9:03.

12 BY MR. HELFMEYER:

13 Q So what happens when you walk out the door?

14 A When I walk out the door, I get in my vehicle and I drive
15 to a neutral location. And I retrieve my undercover ID and I
16 come back.

17 Q If you can explain to the jury what this is you are
18 recording.

19 A They are seeing me driving down the street, approaching --
16 : 07 20 I'm on Gulfton and I'm approaching the parking lot for Gulfton
21 Medical Clinic. Then I'm pulling in.

22 Q Is that the same gate that the jury was able to see from
23 the pole camera footage?

24 A Yes, it is.

16 : 07 25 Q So this is the view of you coming into the back parking

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16 : 07 1 lot?

2 A Yes, it is.

3 Q What did he say?

4 A He said, "No cell phones."

16 : 08 5 MR. HELFMEYER: We can stop it here. Thank you.

6 *BY MR. HELFMEYER:*

7 Q What is the jury looking at now? Where are you?

8 A I am inside the clinic in the front waiting area. There is
9 approximately 30 people on the inside. There are signs posted
10 on the walls. That's the only restroom that's in there for
11 people to use. And that open door to the back, that's a cipher
12 lock that's leading to the back office areas.

13 Q The cipher door lock is where the nice person is; is that
14 correct?

15 A That's correct.

16 MR. HELFMEYER: For the record, I'm showing the
17 witness Government 319.

18 *BY MR. HELFMEYER:*

19 Q If you could take a look at those, as well as Government
16 : 09 20 361.4. You mentioned signs on the walls inside the clinic.
21 Did the signs have a general theme?

22 A Yes.

23 Q What was the general theme?

24 A No phones, no electronics, things of that nature.

16 : 09 25 Q The two exhibits that I handed up, the four pages, were

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16:09 1 those signs that were on the walls at Gulfton when you were
2 there?

3 A Yes, they were.

4 MR. HELFMEYER: For the record, I'm going to publish
16:10 5 the exhibits to the jury.

6 *BY MR. HELFMEYER:*

7 Q Can you read what it says there?

8 A "No book bags or large purses allowed, male or female. No
9 exceptions."

16:10 10 Q Read these other two --

11 A "All electronic devices must be powered off, including
12 Bluetooth, headphones, etcetera. You will be escorted off the
13 premises. No exceptions. Absolutely no cell phones allowed in
14 this clinic. Cell phones must be turned off. No cell phones.
16:10 15 No exceptions."

16 Q How many chairs were in the waiting room?

17 A Thirty.

18 Q You said there were approximately 30 people in there, as
19 well?

16:11 20 A Yes.

21 Q Were people in the waiting room allowed to stand up?

22 A They were not allowed to stand.

23 Q How do you know that?

24 A The security guy at the door -- after I checked in the
16:11 25 first time, there was no chairs. I stood. He said, You have

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16:11 1 to --

2 MR. WILLIAMS: Objection as to what somebody else
3 said. Judge, that's hearsay.

4 THE COURT: How do you get around that, if you can?

16:11 5 MR. HELFMEYER: Statements of an agent, Your Honor.

6 MR. WILLIAMS: That's not the statement of an agent.
7 She is talking about what the guard said, Judge.

8 THE COURT: Sustained.

9 *BY MR. HELFMEYER:*

10 Q Let's play the video. What does the sign say right there,
11 the capacity for the room?

12 A It said there were 23 seats.

13 Q For the record, we stopped at 9:07:21. You had an exchange
14 with somebody at the front desk. What happened?

15 A Yes. I stepped up and I gave my ID. She informed me that
16 she --

17 MR. WILLIAMS: Objection as to what somebody else has
18 said.

19 THE COURT: Overruled. How do you get around that?

16:14 20 MR. HELFMEYER: She is an agent of the defendants. It
21 is not offered for its truth.

22 THE COURT: What is it offered for?

23 MR. HELFMEYER: What she said, the effect on the
24 listener, Your Honor.

16:14 25 MR. WILLIAMS: If she said it, Judge, what else could

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16:14 1 it be offered for other than what she said?

2 THE COURT: Overrule the objection for that limited
3 purpose. Go on.

4 *BY MR. HELFMEYER:*

16:14 5 Q What did she say?

6 A She told me that she doesn't know if I will be able to be
7 seen today. That they are almost at capacity.

8 Q Do you know who was person was that you spoke to?

9 A Shemetra Morgan.

16:14 10 Q What was the atmosphere of the waiting room?

11 A The general atmosphere of the waiting room, there was a lot
12 of people. Some of them looked like they were homeless,
13 dressed in pajama pants, flip-flops. They had tattoos of stars
14 on their hands, their neck, their head.

16:15 15 *BY MR. HELFMEYER:*

16 Q Special Agent Graham, for the record, it stopped at
17 9:07:50.

18 What is the jury looking at in the upper
19 left-hand corner of the screen?

16:15 20 A There are two surveillance cameras.

21 Q How many surveillance cameras were in the outside waiting
22 room?

23 A Those two surveillance cameras and another one in the far
24 right-hand corner.

16:16 25 Q So a total of three in the waiting room?

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16:16 1 A Yes, that I observed.

2 Q Earlier on in the video, the jury saw an armed security
3 guard. Did you count how many security guards there were in
4 total?

16:16 5 A Yes. That day there were a total of six armed security
6 guards, five in uniform and one in plainclothes.

7 Q And were they all armed?

8 A Yes.

9 Q When you say there was one in plain clothes, how do you
16:16 10 know he was a security guard?

11 A From previous surveillance operations, I knew he was a
12 security guard as well as it seemed like to me he was the head
13 of security because he was instructing everybody.

14 Q If we looked at the player it would show there was only a
16:16 15 few minutes left on the recording. Did something happen to the
16 video recorder?

17 A The battery went out.

18 Q Thank you. So you are sitting in the waiting room, Special
19 Agent Graham. Did you eventually get called back up to the
20 counter?

21 A I go up to the counter --

22 THE COURT: Yes or no? That's a yes or no question.
23 Did you get called up to the counter?

24 THE WITNESS: Yes, Your Honor.

16:17 25 BY MR. HELFMEYER:

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16 : 17 1 Q What happened when you got called back up to the counter?

2 A I got called back up to the counter, and I was told that I
3 would be seen --

4 MR. WILLIAMS: Objection, again, Your Honor.

16 : 17 5 THE COURT: Overruled.

6 THE WITNESS: I was told I was going to be seen and
7 that I needed to sign my name on line 57 and to fill out the
8 new patient packet.

9 *BY MR. HELFMEYER:*

10 16 : 17 Q Did you pay at that point?

11 A Yes, I did.

12 Q How much did you pay?

13 A \$270.

14 Q Are you sure it is \$270?

15 16 : 17 A Yes.

16 Q At any point, did you write a report of investigation in
17 this case?

18 A Yes, I did.

19 Q Did you say anything inconsistent with that?

16 : 17 20 A Yes, I did.

21 Q What did you put in that report?

22 A I put it was \$280.

23 Q But the truth is that it was \$270?

24 A Yes. It was. 270.

16 : 17 25 Q How did you pay the \$270?

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16 : 17 1 A In cash.

2 Q Was there an option for how you could pay?

3 A No.

4 Q Could you have paid with a credit card?

16 : 17 5 A No, sir.

6 Q What about insurance?

7 A No, sir.

8 Q You said you signed in when you paid right next to what
9 patient number?

16 : 18 10 A Fifty-seven.

11 MR. HELFMEYER: And if we could publish Government
12 Exhibit 315, page 32.

13 BY MR. HELFMEYER:

14 Q Do you see your sign-in anywhere on this, on Government
16 : 18 15 Exhibit 315?

16 A Number 57.

17 Q I see that it says Tonya Jackson. That's not your name,
18 right?

19 A That is correct.

16 : 18 20 Q Why did you write down Tonya Jackson?

21 A That's my undercover name.

22 Q Why do you have to use a different name?

23 A For officer safety and so I won't be recognized.

24 THE COURT: All right. I think we are going to take
16 : 18 25 our first break at this time. We will take a little bit longer

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16:18 1 because Ellen has got to come in and visit with you.

2 We will take a break. It is now 4:20. We are
3 going to get back in at 4:40 and go right on until 6:00. Ellen
4 will have a chance to visit with you and then you will take a
16:19 5 break. She needs to give you some information, so that should
6 be plenty of time to get a break. We'll see you at that time.
7 You can follow the marshal into the jury room, please.

8 *(Court recessed at 4:19 p.m.)*

9 *(Court resumed at 4:46 p.m.)*

16:46 10 THE COURT: You want the lights done the same way?

11 MR. HELFMEYER: Yes, Your Honor.

12 THE COURT: Let's turn that bank out and this bank
13 out.

14 MR. HELFMEYER: I will try to keep the jurors awake,
16:46 15 Your Honor.

16 THE COURT: You are doing fine. Keeping judge awake
17 is about half of the concern you ought to have. Go on.

18 *BY MR. HELFMEYER:*

19 Q Special Agent Graham, you testified that your undercover
16:46 20 name is Tonya Jackson and you are number 57, right?

21 A Yes.

22 Q Did it appear there were at least 56 other people at the
23 clinic that morning?

24 A Yes.

16:46 25 Q You testified a moment ago that the cost was \$270 for the

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16 : 46 1 office visit?

2 A Yes.

3 Q Why had you written 280 in your report?

4 A It was a typo.

16 : 47 5 Q Can you describe the other people in the waiting room at
6 the clinic?

7 A The other people in the waiting room, there were men and
8 women of all races. Some looked homeless. Some looked like
9 they just rolled out of bed with pajama pants and flip-flops,
10 tank tops. They had tattoos of a star on their neck, their
11 arms, their head. And it smelled of marijuana.

12 Q Were there people waiting in the waiting room that were
13 obviously not patients?

14 MR. WILLIAMS: Objection, Judge. She would have no
16 : 47 15 idea --

16 THE COURT: Sustained as to the form of the question.

17 BY MR. HELFMEYER:

18 Q Did you notice any behavior that was inconsistent with
19 someone being a patient?

16 : 47 20 A Yes, I did.

21 Q What did you notice?

22 A I noticed other people from the outside coming in, helping
23 people fill out their paperwork.

24 Q Can you explain that a little more to the jury when you say
25 people coming from the outside?

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16 : 48 1 A Yes. The crew leaders --

2 MR. WILLIAMS: Objection. Speculation as to what
3 normally happens.

4 THE COURT: Lay some predicate before you go into
16 : 48 5 this. Okay.

6 *BY MR. HELFMEYER:*

7 Q Special Agent Graham, are you familiar with the inner
8 workings of pill mills?

9 A Yes, I am.

10 Q And how are you familiar with that?

11 A I'm familiar with that based on my training and experience
12 working with the Tactical Diversion Squad.

13 Q Did you make observations in this case that --

14 THE COURT: Did you make some observations in this
16 : 48 15 case? Yes or no?

16 *BY MR. HELFMEYER:*

17 Q Did you make observations in this case?

18 A Yes.

19 THE COURT: Next question.

16 : 48 20 *BY MR. HELFMEYER:*

21 Q Did you make observations in this case that --

22 THE COURT: No. Don't lead her. Just ask her.

23 *BY MR. HELFMEYER:*

24 Q Were your observations in this case consistent with what
16 : 48 25 you have seen elsewhere?

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16 : 48 1 A Yes.

2 Q What did you notice?

3 A I noticed crew leaders, which are other people that come
4 from the outside and help people fill out their paperwork.

16 : 48 5 Q And what are crew leaders?

6 A Crew leader is a person that brings several people to the
7 clinic, pays for their doctor's visit, pays to get their
8 pharmacy prescription filled, in exchange for the drugs to be
9 sold on the street for a profit.

16 : 49 10 Q In your trip to Gulfton, did you see any money changing
11 hands?

12 A No.

13 Q Did you see the people that you are calling crew leaders
14 filling out paperwork for patients?

16 : 49 15 A Yes.

16 Q How long were you in the waiting room?

17 A I was there for a long time.

18 Q A couple hours?

19 A Yes.

16 : 49 20 Q The whole time you were sitting in a chair?

21 A Yes.

22 Q Could you describe the chairs in the waiting room to the
23 jury?

24 A It is a very slim chair, very uncomfortable. My thighs was
25 touching the people sitting next to me.

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16 : 49 1 Q Did the chair have armrests?

2 A No.

3 Q Was it more or less comfortable than the chair that you are
4 sitting in?

16 : 49 5 A This chair is very comfortable. That chair was
6 uncomfortable.

7 Q During the couple hours you spent waiting in the Gulfton
8 waiting room, did you hear any patients complaining of pain?

9 MR. WILLIAMS: Objection, Judge, as to what somebody
16 : 50 10 else said.

11 THE COURT: Say it again. Don't answer the question.
12 Repeat the question.

13 MR. HELFMEYER: I asked the special agent if she heard
14 anyone complaining of pain. It would be a statement of present
15 sense.

16 THE COURT: Overruled.

17 BY MR. HELFMEYER:

18 Q Special Agent, did you hear anyone complaining of pain?

19 A No.

16 : 50 20 Q Did you hear anyone complaining?

21 A Yes.

22 Q What were they complaining about?

23 MR. WILLIAMS: Objection.

24 THE COURT: How do you get around that? Is this part
25 of her criminal investigation or what?

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16 : 50 1 MR. HELFMEYER: It is part of her criminal
2 investigation, Your Honor, but it is also present sense
3 impression, what people are complaining of, their current state
4 of mind.

16 : 50 5 THE COURT: Overrule the objection.

6 *BY MR. HELFMEYER:*

7 Q What were the people in the waiting room complaining about,
8 Special Agent Graham?

9 A They were complaining about it was taking too long to get
16 : 50 10 their prescriptions and be seen by the doctor.

11 Q Did you see either of the defendants while you were at
12 Gulfton?

13 A Yes.

14 Q Who did you see?

16 : 50 15 A I saw Dr. Craig and Mr. Faithful.

16 Q When did you see Dr. Craig?

17 A I saw Dr. Craig after I initially entered the clinic and I
18 took a seat. I saw -- after the plainclothes security
19 gentleman came from the back talking on a two-way radio, he
20 went outside. And I looked over my shoulder out of the window,
21 and he was escorting Dr. Craig in. She was wearing yellow
22 scrubs and had a black backpack on wheels.

23 Q Did you see her come into the clinic?

24 A Yes, I did.

16 : 51 25 Q You said that was after you arrived at the clinic?

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16 : 51 1 A That is correct.

2 Q So it was after 10:00 a.m. on June 15th?

3 A Yes.

4 Q You testified that you saw Mr. Faithful, as well?

16 : 51 5 A Yes.

6 Q Where did you see him?

7 A I saw Mr. Faithful in the back room where the patient files
8 are kept, where I gave the money to Shametra Morgan.

9 Q Did you see him when you first went up to pay?

16 : 51 10 A I saw him when I first went up to pay. He was off to my
11 right. I could not observe what he was doing.

12 The second time I saw him is when I went back to
13 have my vitals taken.

14 Q We will get into that in a second.

16 : 52 15 When you went back to have your vitals taken,
16 what was Mr. Faithful doing?

17 A He was walking out of the office there where you paid your
18 money.

19 Q Do you remember if he was carrying anything?

16 : 52 20 A He was carrying a black Oakley backpack.

21 Q While you were in the waiting room, did you see anyone get
22 caught using a cell phone?

23 A Yes, I did. I observed the plainclothes security guy come
24 from the back and stop by a patient and say "Hey, I saw you on
25 your phone. Give me your phone."

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16 : 52 1 MR. WILLIAMS: Objection, Judge, again as to what
2 somebody else is saying.

3 THE COURT: Read the question back, please.

4 (The record was read as requested)

16 : 52 5 THE COURT: Overruled. That's a yes or no.

6 BY MR. HELFMEYER:

7 Q Special Agent Graham, did you see anyone get caught using a
8 cell phone?

9 A Yes.

10 Q What happened when that person got caught?

11 A I observed the plainclothes security guy come up and tell a
12 person that he observed him --

13 MR. WILLIAMS: Objection.

14 THE COURT: Sustained as to what he said.

15 MR. HELFMEYER: It is not offered as for the truth.

16 THE COURT: I understand that. You don't need that.
17 Somebody was using a cell phone, right?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: As a result of the cell phone, did the
16 : 53 20 guard take some action?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: What was that action?

23 THE WITNESS: The guard --

24 THE COURT: Without saying what he said, what
16 : 53 25 happened?

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16 : 53 1 THE WITNESS: He took the phone.

2 THE COURT: Go on. Next question. Easy to get around
3 that.

4 *BY MR. HELFMEYER:*

16 : 53 5 Q Was your name eventually called to go back, Special Agent
6 Graham?

7 A Yes.

8 Q What happened?

9 A I went to the back.

16 : 53 10 Q Can you describe the back area?

11 A It was a waiting room, another waiting room, smaller, with
12 10 chairs.

13 Q Were there armed security guards there, as well?

14 A Yes.

16 : 53 15 Q Were they all in uniform?

16 A Yes.

17 Q What happened in the back waiting room, did you get called
18 by somebody else?

19 A Yes.

16 : 53 20 Q What happened then?

21 A I went to the room to be triaged.

22 Q What happened at the triage?

23 A I stood on the scales, bathroom type small square scales.

24 I had my weight taken. Then I sat in the chair. The medical
25 assistant put the blood pressure cuff on, took my blood

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16 : 54 1 pressure. Then I took the blood pressure cuff off at the end
2 while she sat behind the desk.

3 Q When you say a bathroom type scale, was it the one with the
4 slide or you just stand on it on the ground?

16 : 54 5 A You stand on it. It is just on the ground.

6 Q While you were meeting with the person you identified as
7 the medical assistant, was he or she filling out a form?

8 A Yes.

9 Q What happened at the end of that triage after your vitals
16 : 54 10 were taken?

11 A I was told to go to the front waiting area.

12 Q Did anything happen in the front waiting area? Did you see
13 any other security guards?

14 A Yes. I saw the plainclothes security guard walk from the
16 : 54 15 back, and he swiped the top of the door, the cipher door, and
16 swiped along the side of it.

17 Q Can you make the motion that he made for the jury? You say
18 swipe. That can mean a lot of different things.

19 A He swiped across the top of the door frame and then along
16 : 55 20 the side.

21 Q And when he swiped the top of the door and along the side,
22 did he make any statements?

23 A Yes, he did.

24 THE COURT: Who is it that did that?

25 MR. HELFMEYER: The security guard, Your Honor.

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16 : 55 1 THE COURT: All right. What is the purpose?

2 MR. HELFMEYER: Your Honor, he is an agent of the
3 defendants, which will be brought out in future testimony, but
4 also it's not offered for its truth. It is his statement, Your
16 : 55 5 Honor.

6 THE COURT: That is still hearsay.

7 MR. HELFMEYER: Not if it is --

8 THE COURT: Up to a point. Hang on a second.

9 Was this part of your criminal investigation. Is
16 : 55 10 that correct?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Overrule the objection. Go on.

13 *BY MR. HELFMEYER:*

14 Q What did the plainclothes clothes security guard say?

16 : 55 15 A As he swiped across the top and the side of the door frame,
16 he stated as he looked back at us sitting there, he said, I'm
17 looking for bugs and things -- stuff like that. When he didn't
18 find any, he walked through the door and looked back and said,
19 "That's the way that I like it."

20 Q After you went back to the front waiting room, did you get
21 called again?

22 A Yes.

23 Q And what happened when you got called?

24 A I went back to the waiting room in the back waiting area.

25 Q Did you eventually go to an exam room?

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16 : 56 1 A Yes, I did.

2 Q Who did you see in the exam room first?

3 A She said she was a nurse practitioner. She was a female
4 that wore a hijab.

16 : 56 5 Q Did this woman who said she was a nurse practitioner do any
6 exercises with you?

7 A No exercises. She -- no.

8 Q What did she do with you?

9 A She told me to bend over and touch my toes. Then she had
16 : 56 10 me to lay on the table and she did leg raises. She checked my
11 reflexes.

12 Q Sorry. When you say reflexes, is that with a little
13 hammer?

14 A Yes, sir.

16 : 56 15 Q What else did she do?

16 A She also checked my abdomen. She said she was checking for
17 my liver function, and she checked my heart.

18 Q Did she drug test you? Did she draw any blood?

19 A No, sir.

16 : 57 20 Q After the woman left who identified herself as a nurse
21 practitioner, did you leave or stay in that exam room?

22 A I stayed in the room.

23 Q How long did you stay in the exam room?

24 A Approximately 25 minutes.

16 : 57 25 Q What happened after 25 minutes?

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16 : 57 1 A Dr. Craig came into the room.

2 Q How did you know it was Dr. Craig?

3 A She walked in and introduced herself to me.

4 Q Do you see Dr. Craig in court today?

16 : 57 5 A Yes, I do.

6 Q Can you identify her by an article of clothing for the
7 jury?

8 A She is wearing a gray suit and a purple blouse.

9 MR. HELFMEYER: For the record, the witness has
16 : 57 10 identified the defendant.

11 THE COURT: The record will so reflect.

12 BY MR. HELFMEYER:

13 Q You testified that the video device you were using
14 malfunctioned or ran out of batteries?

15 A Ran out of batteries.

16 Q Did you have an audio recording device?

17 A Yes.

18 Q Have you had a chance to review that audio recording of
19 your interaction with Dr. Craig?

16 : 57 20 A Yes.

21 Q Does it fairly and accurately depict your interaction with
22 Dr. Craig?

23 A Yes.

24 MR. HELFMEYER: The government would like to play
16 : 58 25 Government's Exhibit 501A. For the record, there is an

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16:58 1 unofficial transcript.

2 THE COURT: Just go on.

3 (A videotape, Government's Exhibit Number 501S, was played)

4 THE COURT: Hold it a second. Stop it.

16:58 5 Remember, we talked about this before. We need
6 more volume out of it. All right. Go on.

7 BY MR. HELFMEYER:

8 Q Special Agent Graham, the recording just stopped. Do you
9 know why that is?

17:00 10 A Yes.

11 Q Why is that?

12 A After the recording to break it down, it just breaks it up
13 into tracks.

14 Q It was 30 minutes and 10 seconds, is that consistent?

17:00 15 A Yes.

16 Q So it breaks it up into 30-minute tracks?

17 A Yes.

18 Q Does it stop recording or just start a new track?

19 A It continues recording.

17:00 20 Q So there should be no gap in the recording?

21 A That is correct, yes.

22 MR. HELFMEYER: For the record, we would like to play
23 Government's 501B.

24 THE COURT: Is it a continuation of the prior one?

17:01 25 MR. HELFMEYER: Yes.

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17 : 01 1 THE COURT: Based on the testimony, go on.

2 (A videotape, Government's Exhibit Number 501B, was played)

3 BY MR. HELFMEYER:

4 Q Special Agent Graham, how long was your total encounter
17 : 01 5 with Dr. Craig?

6 A Ninety-one seconds.

7 Q At the beginning of Dr. Craig's examination, you discussed
8 the car accident from 2015. Is that what you had reported as
9 the origin of your pain?

17 : 01 10 A No.

11 Q What did you report?

12 A Neck spasms and shoulder.

13 Q But from back to 2015?

14 A Yes. 2015.

17 : 01 15 Q Did Dr. Craig ask you how you had managed the pain from
16 that accident in 2015?

17 A No.

18 Q Did she ask you whether you had taken any narcotics to
19 treat pain in 2015?

17 : 02 20 A No.

21 Q Did she ask you how your current pain compares to pain in
22 2015?

23 A No.

24 Q Did she ask you any questions about past pain?

25 A No.

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17:02 1 Q Any questions about past treatment?

2 A No.

3 Q Did she ask you any questions about whether you had tried
4 any other treatment than narcotics for your pain?

17:02 5 A No.

6 Q From the recording, it sounded like she jumped right into
7 the X-rays. Did she say why there was an x-ray requirement?

8 A No.

9 Q At the end of the first recording and into the second one,
17:02 10 it sounded like an exercise was being done. What did Dr. Craig
11 have you do?

12 A Bend over and touch my toes.

13 Q Is it any more complicated than that?

14 A No.

15 Q Did Dr. Craig touch you in way?

16 A Yes.

17 Q What did she say?

18 A She touched my back more like you are pointing with a
19 finger, just pointing, but not with any manipulation or care.

17:03 20 Q Was it like a massage?

21 A No.

22 Q When you say "pointing," one finger or the whole hand?

23 A One finger.

24 Q Where did she touch you?

17:03 25 A Lower back.

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17:03 1 Q Did she have you do any other exercises?

2 A No.

3 Q Had you reported lower back pain as a complaint?

4 A No.

17:03 5 Q So the entirety of her examination was asking you to bend
6 over and touch your toes?

7 A Yes.

8 Q What was your reported reason, your chief complaint in
9 visiting Gulfton?

17:03 10 A It was neck pain and shoulder spasm.

11 Q Did Dr. Craig touch your shoulders?

12 A No.

13 Q Did she touch your neck?

14 A No.

17:03 15 Q For the record, during the break, I showed defense counsel
16 Government Exhibit 357, which I'm showing to the jury right
17 now. Do you know what Government's 357 is?

18 A My patient record.

19 Q And I would like to go through a little bit of your patient
17:04 20 record with the jury.

21 THE COURT: Are you going to put it on the screen?

22 MR. HELFMEYER: We have it on the screen, Your Honor.

23 THE COURT: Go right ahead.

24 BY MR. HELFMEYER:

17:04 25 Q I want to move to page nine of Government's Exhibit 357.

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17:04 1 Do you recognize this form?

2 A Yes.

3 Q What is it?

4 A It's the HIPAA release form to release medical records.

17:04 5 THE COURT: HIPAA is what? You say "HIPAA release."

6 What is HIPAA, if you know?

7 THE WITNESS: It is just a form to authorize someone
8 to get your medical records.

9 *BY MR. HELFMEYER:*

17:04 10 Q Is this the form you would fill out for Dr. Craig or
11 Gulfton to get records from the previous doctor?

12 A Yes.

13 Q What doctor, clinic or hospital did you indicate you were
14 giving permission for Gulfton to get records from?

17:04 15 A None.

16 Q Did Dr. Craig ask you to write anything down?

17 A No.

18 Q What records were you allowing Dr. Craig and Gulfton to
19 request from the previous doctor or physician?

17:05 20 A Nothing.

21 Q Did Dr. Craig ask you to fill that out just so she could
22 request records from your previous provider?

23 A No.

24 Q Did anyone discuss with you requesting your previous
17:05 25 medical records?

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17 : 05 1 A No.

2 Q I would like to move to page 13, if we can, of Government
3 Exhibit 357.

4 Special Agent Graham, did you fill out page 13 of
17 : 05 5 Government's 357?

6 A Yes, I did.

7 Q What did you put down as your chief complaint?

8 A Neck muscle spasms.

9 Q I see that you didn't mark down "lower back pain." Was
17 : 05 10 that on purpose?

11 A Yes, it was.

12 Q Why was that?

13 A Because normally lower back pain is the chief complaint
14 people come in with. I wanted to do something else.

15 Q Did Dr. Craig and other people at Gulfton assume you had
16 lower back pain?

17 MR. WILLIAMS: Objection as to what somebody else
18 assumed, Judge.

19 MR. HELFMEYER: I can rephrase the question.

17 : 06 20 THE COURT: Please.

21 BY MR. HELFMEYER:

22 Q Did Dr. Craig or the other people at Gulfton clinic ask you
23 questions about lower back pain?

24 A Yes.

17 : 06 25 Q In the upper -- in the right-hand corner, it says "primary

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17:06 1 care physician." Who did you put down as your primary care
2 physician?

3 A No one.

4 Q Was that on purpose?

17:06 5 A Yes, it was.

6 Q Did Dr. Craig ask you who your primary care physician was?

7 A No.

8 Q Did anyone else?

9 A No.

17:06 10 Q Did Dr. Craig ask you any questions about your previous
11 treatment for pain?

12 A No.

13 Q I want to move to page two of Government's Exhibit 357.

14 Special Agent Graham, are you familiar with what
15 is on the screen in front of the jurors?

16 A Yes, I am.

17 Q What is on the screen in front of the jurors?

18 A It is the prescription monitoring program report.

19 Q What is that? What is a prescription monitoring program
20 report?

17:07 21 A It is a report that's dispensed -- anytime a controlled
22 substance is prescribed and the prescription is filled, an
23 agent writes a report.

24 Q So the report would reflect filled prescriptions; is that
25 correct?

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17 : 07 1 A Yes.

2 Q Who maintains it?

3 A The Board of Pharmacy right now, yes.

4 Q When was this report run?

17 : 07 5 A This report was run on June 15, 2017.

6 Q Was that the day you went to Gulfton?

7 A Yes.

8 Q Who was the report run for?

9 A Tonya Jackson.

17 : 08 10 Q And that was your undercover identity?

11 A Yes.

12 Q What prescription is reflected in this report? What does
13 this report say?

14 A That I have had two prescriptions, controlled substance
15 prescriptions prescribed to me.

16 Q How do we know that?

17 A Based on the prescriptions section.

18 Q When was the prescription written?

19 A April 12, 2017.

17 : 08 20 Q And let's do them one by one. What was the first
21 prescription written on April 12?

22 A Hydrocodone.

23 Q Does that go by any other name?

24 A Norco.

17 : 08 25 THE COURT: What else? Hydrocodone, that's it?

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17 : 08 1 THE WITNESS: That's the main name I know. The street
2 name is Norco.

3 THE COURT: Street name?

4 THE WITNESS: Norco is what they call it.

17 : 08 5 THE COURT: Go on.

6 *BY MR. HELFMEYER:*

7 Q Was there another prescription? Did you get another
8 prescription in April?

9 A Yes.

10 Q What was that for?

11 A Carisoprodol.

12 Q What is carisoprodol called?

13 A Soma.

14 Q Regarding the hydrocodone prescription from April of 2017,
17 : 09 15 what was the quantity?

16 A Hydrocodone, quantity, 90.

17 Q And for Soma?

18 A Sixty.

19 Q I would like to go back to page 19 of Government's
17 : 09 20 Exhibit 357. If we can highlight the portion -- there is a
21 portion on there that refers to illegal drug use towards the
22 bottom, I believe.

23 Special Agent Graham, did you answer whether you
24 had a history of illegal drug use?

17 : 10 25 A Yes. I said nothing.

Helfmeyer Direct of Tonya Graham

17 : 10 1 Q Was that an answer?

2 A Yes. I didn't mark anything.

3 Q Was that on purpose?

4 A Yes.

17 : 10 5 Q Did anyone follow up on your empty answer on the
6 questionnaire?

7 A No.

8 Q Did Dr. Craig talk to you about the dangers of mixing
9 hydrocodone, Soma and illegal drugs?

17 : 10 10 A No.

11 Q Did Dr. Craig mention any dangers of the drugs she was
12 prescribing?

13 A No.

14 Q Did she warn you of side effects?

17 : 10 15 A No.

16 Q Did she offer you any advice on how to take hydrocodone and
17 Soma?

18 A No.

19 Q Did she tell you why she was prescribing Norco?

17 : 10 20 A No.

21 Q Did she tell you why she was prescribing Soma?

22 A No.

23 Q Did she say why Norco over some other pain medicine?

24 A No.

17 : 10 25 Q Did she offer you any advice at all?

Helpmeyer Direct of Tonya Graham

17:10 1 A No.

2 Q Did she ask you if you had any questions?

3 A No.

4 Q I would like to move to a different part of your patient
17:11 5 file, page 12 of Government Exhibit 357.

6 Special Agent Graham, did you fill this form out?

7 A No.

8 Q Who signed at the bottom?

9 A Gazelle Craig, DO.

10 Q And I didn't ask you earlier but was Dr. Craig writing
11 anything while you were with her for 91 seconds?

12 A Yes.

13 Q I would like to zoom in on the plan section. In the upper
14 right-hand corner it says "Labs." Did Dr. Craig draw any
17:11 15 blood?

16 A No.

17 Q Did anyone?

18 A No.

19 Q Did Dr. Craig tell you to get blood work done?

17:11 20 A No.

21 Q Did Dr. Craig mention anything about labs or blood work?

22 A No.

23 Q Moving down a little bit to the complimentary and
24 alternative medicine as it shows there, did Dr. Craig tell you
17:12 25 to use a massage chair over the next 30 days?

Helpmeyer Direct of Tonya Graham

17 : 12 1 A No.

2 Q That is up a little bit from the area that's highlighted,
3 for the record.

4 Did Dr. Craig tell you to use a hot or cold pack
17 : 12 5 over the next 30 days?

6 A No.

7 Q Did Dr. Craig tell you to do anything other than take the
8 narcotics you were prescribed?

9 A No.

10 Q Moving down to the complimentary and alternative medicines
11 today's section, what is checked off?

12 A Massage chair.

13 Q Did you sit in a massage chair on June 15 of 2017?

14 A No.

15 Q Did you see a massage chair?

16 A No.

17 Q While you were at Gulfton, did you see an exercise bike?

18 A No.

19 Q A tread mill?

17 : 12 20 A No.

21 Q An elliptical?

22 A No.

23 Q What is a TENS unit? Do you know?

24 A A TENS unit is a device that gives, like, electrodes to
17 : 12 25 stimulate your back, your muscles.

Helpmeyer Direct of Tonya Graham

17:12 1 Q Did you see a TENS unit while you were at Gulfton?

2 A No.

3 Q If we can move down a little bit on the page to the
4 rationale portion, can you read the second thing that's checked
17:13 5 regarding the activities of daily living?

6 A Allows patients to perform ADLs.

7 Q Did Dr. Craig tell you -- I'm sorry. Did you tell
8 Dr. Craig that your pain was affecting your ability to perform
9 activities of daily living?

17:13 10 A No.

11 Q Did Dr. Craig say she was performing --

12 THE COURT REPORTER: I'm sorry. Can you repeat your
13 question?

14 BY MR. HELFMEYER:

17:13 15 Q Did Dr. Craig tell you that she was prescribing you
16 narcotics to aid your ability to perform activities of daily
17 living?

18 A No.

19 Q What is the third one down?

17:13 20 A "Allows patient to have meaningful relationships."

21 Q Did you tell Dr. Craig that your pain was affecting your
22 ability to have meaningful relationships?

23 A No.

24 Q Did she tell you she was prescribing you narcotics to help
17:14 25 you in having meaningful relationships?

Helpmeyer Direct of Tonya Graham

17 : 14 1 A No.

2 Q Over to the right, did you tell Dr. Craig that your pain
3 was preventing you from seeking or maintaining employment?

4 A No.

17 : 14 5 Q Did Dr. Craig say that she was prescribing you narcotics to
6 aid your ability to maintain and seek employment?

7 A No.

8 Q Did Dr. Craig discuss any of these rationales with you?

9 A No.

17 : 14 10 Q If we can zoom in on the discussion and education portion.

11 The first one, if you could read that first
12 phrase before the comma.

13 A "The patient and caregiver reviewed self-help tools."

14 Q Special Agent Graham, who was your caregiver?

17 : 14 15 A It is not annotated. I don't have one.

16 Q Did Dr. Craig give you care?

17 A No.

18 Q What did she give you?

19 A A prescription.

17 : 15 20 Q Can you read the second item that's checked off?

21 A "The caregiver explained to the patient the risks of using
22 other drugs or ETOH with the prescribed medication and that
23 doing so would not only be dangerous but could result in
24 termination of treatment with this provider. The patient
25 expresses understanding."

Helpmeyer Direct of Tonya Graham

17:15 1 Q Did Dr. Craig explain that to you?

2 A No.

3 Q Did you express understanding of that?

4 A No.

17:15 5 Q If we can go to the final one and you can read that first
6 sentence.

7 A "The patient agrees not to divert or abuse medicine."

8 Q Did you tell Dr. Craig that you would not divert the
9 medicine?

17:15 10 A No.

11 Q What is diversion again, for the jury?

12 A Diversion is when drugs are prescribed to a person and that
13 person transfers the drugs to another person for illicit use.

14 Q Can you read the next sentence?

17:15 15 A "The patient verbalizes understanding that all pain meds
16 are prescribed with the objective of pain relief and
17 improvement in patient's physical and psychosocial function."

18 Q Did you verbalize that understanding?

19 A No.

17:16 20 Q Can you read the third sentence?

21 A "The patient was counseled on proper use of the prescribed
22 medications and reviewed the opioid and pain contract,
23 including the need for future urine drug screens, including
24 ETOH and pill counts, for the assurance of the patient's safety
25 and compliance."

Helpmeyer Direct of Tonya Graham

17:16 1 Q Did Dr. Craig counsel you on how to use the narcotics?

2 A No.

3 Q Can you read the next sentence, starting with, "The patient
4 was counseled"?

17:16 5 A "The patient was counseled about their chronic medical
6 condition and its relationship to anxiety and depression."

7 Q Did Dr. Craig counsel you on how your pain was affecting
8 your anxiety?

9 A No.

17:16 10 Q Did she perform any, kind of, neurological exam on you?

11 A No.

12 Q Anything about your emotions?

13 A No.

14 Q Can you read the next sentence, starting with "reviewed"?

17:17 15 A "Reviewed with the patient treatment plan, along with his
16 goals and limitations, especially emphasizing the risks,
17 benefits and side effects from the medications and procedures,
18 including aspects of slow versus abrupt discontinuation and
19 withdrawal."

17:17 20 Q Did Dr. Craig review the treatment plan with you?

21 A No.

22 Q Whose signature is on the bottom of the page?

23 A Gazelle Craig, DO.

24 Q After your 91 seconds with Dr. Craig, what did you do?

17:17 25 A I was told to go back -- I went to the front.

Helpmeyer Direct of Tonya Graham

17:17 1 Q And did you receive anything at the front?

2 A Prescription.

3 Q Did you fill that prescription?

4 A Yes, I did.

17:17 5 Q What did you get when you filled the prescription?

6 A I got hydrocodone, Soma, Biofreeze and some ibuprofen.

7 THE COURT: What?

8 THE WITNESS: Ibuprofen.

9 BY MR. HELFMEYER:

17:17 10 Q I would like to go to page 21 of Government's Exhibit 357.

11 Are these the prescriptions that Dr. Craig
12 prescribed to you on June 15, 2017?

13 A Yes.

14 Q Before you received these prescriptions, had Dr. Craig told
15 you what she was prescribing you?

16 A No.

17 Q Let's take a look at the top prescription, the one on the
18 left. What did Dr. Craig prescribe to you?

19 A Soma, 350 milligrams, 70 count; Biofreeze gel, one tube;
20 and ibuprofen, 800 milligrams, 30 count.

21 Q Special Agent Graham, do you know what Soma treats?

22 A Muscle spasms.

23 Q Did Dr. Craig tell you that that is what Soma treats?

24 A No.

17:18 25 Q You know what that is because you are a DEA agent?

Helpmeyer Direct of Tonya Graham

17:18 1 A Yes.

2 Q What about Biofreeze gel? Did Dr. Craig tell you what
3 Biofreeze gel treats?

4 A No.

17:18 5 Q Did you know you were going to be prescribed Biofreeze gel
6 before you received a prescription?

7 A No.

8 Q Did she give you any instruction about how to use or apply
9 the Biofreeze gel?

17:19 10 A No.

11 Q The ibuprofen, did Dr. Craig tell you whether you were
12 supposed to take the ibuprofen with the other narcotics she had
13 prescribed or only when the pain was less?

14 A No.

17:19 15 Q Did she give you any advice on how to take these drugs?

16 A No.

17 Q The first drug that's listed, Soma, do you know what the
18 true name of Soma is?

19 A Carisoprodol.

17:19 20 Q Is that a controlled substance?

21 A Yes, it is.

22 Q What date were these three items prescribed?

23 A June 15, 2017.

24 Q Was that the date that you saw Dr. Craig?

17:19 25 A Yes.

Helpmeyer Direct of Tonya Graham

17:19 1 Q Who signed that prescription?

2 A Gazelle Craig, DO.

3 Q Let's go to the second prescription, over to the left.

4 THE COURT: To the right.

17:19 5 MR. HELFMEYER: Thank you, Your Honor.

6 THE COURT: Go on.

7 BY MR. HELFMEYER:

8 Q On the prescription on the left, who is that prescription
9 written for?

17:20 10 A Tonya Jackson.

11 Q And that was your undercover name?

12 A Yes.

13 Q Over to the right -- thank you, Your Honor -- the second
14 prescription, who is it written for?

17:20 15 A Tonya Jackson.

16 Q When was it written?

17 A It was written on June 15, 2017.

18 Q That was the same date that you saw Dr. Craig?

19 A Yes.

17:20 20 Q What did she prescribe you?

21 A Norco 10/325 milligrams.

22 Q How many?

23 A One hundred.

24 Q One hundred?

17:20 25 A Yes.

Helpmeyer Direct of Tonya Graham

17 : 20 1 Q What does the 10/325 mean?

2 A The strength.

3 Q So it is 10 milligrams of Norco?

4 A Yes.

17 : 20 5 Q And how many pills?

6 A One hundred.

7 Q I want to go back to something we talked about --

8 THE COURT: How often -- does it say on here how often
9 you were supposed to take it?

17 : 20 10 THE WITNESS: No.

11 THE COURT: Go on.

12 *BY MR. HELFMEYER:*

13 Q You testified about your previous prescription that was in
14 the DPS computer printout.

17 : 21 15 A Yes.

16 Q Do you remember what that -- how many pills that doctor had
17 prescribed for you?

18 A Yes.

19 Q How many was that?

17 : 21 20 A It was 60 Soma and 90 Norco.

21 MR. HELFMEYER: Can we go back to page 22 of
22 Government's Exhibit 357?

23 *BY MR. HELFMEYER:*

24 Q So 90 hydrocodone and 60 carisoprodol?

17 : 21 25 A Yes.

Helpmeyer Direct of Tonya Graham

17:21 1 Q And the hydrocodone is Norco?

2 A Yes.

3 Q And carisoprodol is what?

4 A Soma.

17:21 5 Q How much did Dr. Craig prescribe you on June 15?

6 A One hundred count hydrocodone and 70 count carisoprodol.

7 Q Did she tell you why she had increased the pills?

8 A No.

17:21 9 Q Did you tell Dr. Craig that the pills that this doctor
10 prescribed for you were insufficient to treat your pain?

11 A No.

12 Q Did she ask?

13 A No.

14 MR. HELFMEYER: If we can go back to the prescription
17:22 15 for -- the Norco prescription.

16 BY MR. HELFMEYER:

17 Q Special Agent Graham, how are you supposed to take Norco?

18 A It says one tab and that's all I know, on the prescription.

19 Q Were you supposed to take it with food?

17:22 20 A I don't know.

21 Q Did she tell you?

22 A No.

23 Q Were you allowed to operate heavy machinery or drive while
24 you took Norco?

17:22 25 A I don't know.

Williams Cross of Special Agent Tonya Graham

17:22 1 Q Mixed with Soma, would that affect?

2 A I don't know.

3 Q Did she tell you anything about that?

4 A No.

17:22 5 Q Special Agent Graham, who signed this prescription?

6 A Gazelle Craig, DO.

7 MR. HELFMEYER: No further questions.

8 Thank you, Your Honor.

9 THE COURT: Pass the witness.

17:22 10 MR. WILLIAMS: Can we turn the lights on?

11 THE COURT: You want them on?

12 MR. WILLIAMS: Turn them all on.

13 **CROSS-EXAMINATION**

14 *BY MR. WILLIAMS:*

17:23 15 Q Special Agent Graham, I'm Cornel Williams. We met before; have we not?

17 A Yes.

18 Q Explain to the jury where we met.

19 A We met in another case.

17:23 20 Q In the other case, was Davis Webster part of that particular case?

22 A Yes.

23 Q Now, we went through this particular video; did we not?

24 A I'm sorry?

17:23 25 Q We went through the video showing when the gates opened,

Williams Cross of Special Agent Tonya Graham

17:23 1 correct?

2 A Yes.

3 Q Do you know who opened those gates?

4 A No, I do not.

17:23 5 Q You don't know if the person who opened the gate was a
6 person of the building itself or if a person that worked for
7 the clinic, do you?

8 A No.

9 Q You don't know the cars that went in, 30 something cars
17:23 10 that went in, where they were going, do you?

11 A To park.

12 Q Okay. So they parked, but you don't know after they got
13 out of the cars if they went in this clinic or went somewhere
14 else in the building, do you?

17:24 15 A No.

16 Q Now, I think you said that you were instrumental in
17 installing this particular camera?

18 A No.

19 Q All right. When was that camera installed? Do you know?

17:24 20 A The camera was installed in February of 2017.

21 Q Do you know which date?

22 A The particular date, no.

23 Q And you don't know who installed it, do you?

24 A No.

17:24 25 Q Now, so as to the people -- the cars that are going in, you

Williams Cross of Special Agent Tonya Graham

17:24 1 don't know who these people are, do you?

2 A No.

3 Q You can't testify that they went into this particular
4 clinic or if they went somewhere else in the building, can you?

17:25 5 A No.

6 Q And you can't testify as to if, in fact, they went into
7 this particular clinic and got prescriptions, can you?

8 A No.

9 Q So I think you made mention of this 15-passenger van. You
17:25 10 don't know how many people got out of that van, do you?

11 A No.

12 Q So basically what you are trying to do for this jury is
13 draw the inference that all these people were going into the
14 clinic; isn't that correct?

17:25 15 A Can you repeat the question?

16 Q So basically what you are trying to do with this jury is
17 draw an inference that all of these people were going into this
18 clinic?

19 A That all of the people are going to the clinic, yes.

17:25 20 Q That's correct?

21 A Yes.

22 Q But you can't say that, can you, because you don't know?
23 You have no personal knowledge of that, do you?

24 A Personal, no.

17:25 25 Q So you are just speculating for this jury, aren't you?

Williams Cross of Special Agent Tonya Graham

17:25 1 A Based on my observations.

2 Q Okay. And, of course, it's just your opinion; is that
3 correct?

4 A Just my opinion?

17:26 5 Q As to where these people were going, as to all the cars, if
6 they were going into the clinic, you are speculating, aren't
7 you?

8 A Based on my observation, that's what I'm saying, yes.

17:26 9 Q Now, regarding the video, I think you testified as to
10 people in the particular clinic, what they had on, the tattoos,
11 the crew leaders, etcetera, etcetera. You couldn't testify as
12 to any of these people needed pain medications or not, can you?

13 THE COURT: I can't hear you.

14 BY MR. WILLIAMS:

17:26 15 Q Whether these people needed pain medication or not, can
16 you?

17 A I'm sorry. Could you repeat the question?

18 Q You can't testify if any of those people sitting in that
19 lobby needed pain medication or not, can you?

20 A No.

21 Q I think you testified you smelled marijuana in the parking
22 lot; is that correct?

23 A Yes.

24 Q And, of course, you don't know where the marijuana smoke
25 came from, who was smoking marijuana, whether it was people in

Williams Cross of Special Agent Tonya Graham

17:27 1 the clinic or outside?

2 A I smelled it in the clinic, as well.

3 Q But nobody was smoking marijuana inside the clinic?

4 A No.

17:27 5 Q What you smelled was somebody who had possibly been smoking
6 marijuana and you smelt the aroma of marijuana inside the
7 clinic?

8 A Yes.

9 Q Off of somebody else's person; is that correct?

17:27 10 A Yes.

11 Q You don't know if that person was being treated or not, do
12 you?

13 A They were sitting in the waiting room next to me.

14 Q But you don't know if they went in and got a script or not,
17:27 15 do you?

16 A No.

17 Q I believe you testified you didn't see anybody standing in
18 that video because there were only so many chairs; is that
19 correct?

17:28 20 A Once you went inside, you could not stand.

21 Q But you saw somebody standing at the counter; did you not?

22 A Standing at the counter?

23 Q In that video.

24 A What do you mean?

17:28 25 Q What somebody standing at the particular counter in that

Williams Cross of Special Agent Tonya Graham

17 : 28 1 video?

2 A They stand at the counter when they are called up to pay or
3 to talk to the person. That's the only standing allowed.

4 Q Okay. And nobody said that. That's just what you saw?

17 : 28 5 A No. The security guard said, No standing. You had to have
6 a seat or go outside and wait.

7 Q And you could hear that on that particular video, can't
8 you?

9 A Yes.

17 : 28 10 Q Okay. Then you gave a characterization as to what these
11 people looked like, what they had on; is that correct?

12 A Yes.

13 Q And in your estimation, you were basically saying that they
14 looked like poor people; is that correct?

17 : 29 15 A No.

16 Q Okay. What were you getting at when you were saying it
17 looks like they had on flip-flops and had gold grills, had
18 stars? What were you getting at when you were testifying to
19 this jury? What were you trying to -- what picture are you
20 trying to paint for this jury with that?

21 A I was just making an observation of the people in the
22 waiting area with me.

23 Q That is very insignificant as to if, in fact, these people
24 were getting illegal prescriptions or not, isn't it?

17 : 29 25 A Can you repeat your question?

Williams Cross of Special Agent Tonya Graham

17 : 29 1 Q That is insignificant as to if these people got
2 prescriptions or not, isn't it?

3 A No.

17 : 29 4 Q Okay. You said there were a total of five -- I'm sorry --
5 of six -- well, five people in uniform and one in plain
6 clothes; is that correct?

7 A Security.

8 Q Okay. And you prepared a DEA6 in relationship to the
9 events that happened on that particular day; did you not?

17 : 30 10 A Yes.

11 Q Explain to the jury what an DEA6 is.

12 A It's a report of events that took place.

13 Q You reviewed that report before you testified today?

14 A Yes.

17 : 30 15 Q And you keep this report so when you testify later, if you
16 have to testify later, you can refresh your memory as to what
17 happened; is that correct?

18 A Yes.

19 Q Okay. And because this happened June 15 and that's been
17 : 30 20 quite some time; is that correct?

21 A Yes.

22 Q And that's why you reviewed this this morning before
23 testifying; is that correct?

24 A Not this morning.

17 : 30 25 Q But you reviewed it recently to refresh your memory as to

Williams Cross of Special Agent Tonya Graham

17:30 1 the events that occurred on that particular day?

2 A Yes. I have reviewed the report.

3 Q All right. Now, on the dates of the particular video, were
4 you present for surveillance on those dates?

17:30 5 A Some of the days.

6 Q Okay. Which days were you present and which days were you
7 not present?

8 A I can't say which ones.

9 Q Okay. All right. But it would be somewhere in your DEA6s;
17:31 10 would it not be?

11 A Not in my report, no, sir.

12 Q If you were present, it wouldn't be in the report?

13 A It would report in the report if I was there, yes.

14 Q Have you reviewed those reports prior to testifying?

15 THE COURT: Slow down, please.

16 BY MR. WILLIAMS:

17 Q Have you reviewed those reports prior to testifying here
18 today in court?

19 A No.

17:31 20 Q So you can't say if you were actually present on any of
21 these days other than June 15 of 2017; is that correct?

22 A When you do surveillance for the --

23 Q Not my question. My question is: You can't tell this jury
24 if you were present on 6/29/17 or any other date of those
25 videos that were shown to the jury?

Williams Cross of Special Agent Tonya Graham

17 : 31 1 A Physically, no, I cannot say.

2 Q All right. And you stated that you made a mistake in your
3 DEA6 as to the amount of money that was paid that particular
4 day; is that correct?

17 : 32 5 A Yes, I did.

6 Q And what was that mistake again?

7 A Instead of \$280, it was \$270 for the visit.

8 Q All right. That's fair. Also, you made another mistake
9 when you went into the clinic and you didn't take your
17 : 32 10 identification; is that correct?

11 A That was an oversight, yes.

12 Q So you had to go back to the car to get your fake ID
13 because it wasn't a real ID, was it?

14 A It is a real ID, just with a fictitious undercover name.

15 Q As a DEA agent, you are allowed to have that fake ID,
16 aren't you?

17 A Yes, I am.

18 Q Because your whole idea when you go in is to deceive the
19 people as to who you are for security purposes?

17 : 33 20 MR. HELFMEYER: Objection. Argumentative.

21 THE COURT: Sustained as to the form of the question.

22 BY MR. WILLIAMS:

23 Q Because when you go in, you don't want to reveal your real
24 identity, do you?

17 : 33 25 A No.

Williams Cross of Special Agent Tonya Graham

17 : 33 1 Q Okay. Now, you mentioned something called crew leaders,
2 correct?

3 A Yes.

4 Q And which people in that video can you affirmatively
17 : 33 5 identify as being a crew leader?

6 A I cannot.

7 Q So when you testified to that to this jury, you were
8 speculating that that is what they were?

9 A No.

17 : 33 10 Q The person who you affirmatively identified as helping
11 someone else fill out information, you don't know who that
12 person was, do you?

13 A No.

14 Q You did not note that on your DEA6, did you?

17 : 34 15 A Yes, I did.

16 Q You noted you saw that, but you don't know if that is the
17 father, the brother, the relative of the person who is in the
18 clinic, do you?

19 A No, I do not.

17 : 34 20 Q So you are speculating they are actually a crew leader,
21 aren't you?

22 A No, sir.

23 Q Explain to this jury how you can affirmatively say that
24 person is a crew leader if, in fact, you don't know who they
25 are.

Williams Cross of Special Agent Tonya Graham

17 : 34 1 A When the person was filling out the paperwork, the crew
2 leader was showing them where to mark off where their pain
3 hurts. I would think if the patient was being treated, they
4 would know where their pain is.

17 : 34 5 Q Did you note that in your DEA6?

6 A I did.

7 Q When you went in to see a particular doctor, you saw them
8 for about a minute and a half; is that correct?

9 A Yes. Ninety-one seconds.

17 : 35 10 Q And shortly thereafter, the tape cut off, didn't it?

11 A No.

12 Q So did the tape keep running after that? Or is that just
13 what the prosecutor played?

14 A No. I think you are mistaking two different things.

17 : 35 15 Q All right. My question is this: The tape stopped when you
16 went out of the particular room; is that correct?

17 A No.

18 Q So the tape continued to run?

19 A Yes.

17 : 35 20 Q So there is other video or there is other audio after you
21 left out of the room with Dr. Craig?

22 A Yes, sir.

23 Q And how long did that audio go?

24 A That I do not know. Not much longer.

17 : 36 25 Q And when you say "not much longer," where did you go after

Williams Cross of Special Agent Tonya Graham

17 : 36 1 you left the particular room with Dr. Craig?

2 A I went to the front waiting area.

3 Q Did the device turn off or did you deactivate it?

4 A Neither while I was there. It was still going.

17 : 36 5 Q While you were sitting out front, the device was still
6 going?

7 A Yes.

8 Q Okay. Did it go long enough in order for it to record you
9 picking up the prescription, the audio for you getting your
17 : 37 10 prescription?

11 A When I walked up to the counter and the prescription was
12 given to me, yes.

13 Q So it was shortly thereafter when you came out that you got
14 the prescription and you left; is that correct?

17 : 37 15 A Yes.

16 Q And where is the remaining audio of that -- well, I guess
17 what I'm getting to, we only played a portion of that
18 particular tape; did we not?

19 A Yes.

17 : 37 20 Q The government did.

21 A Yes.

22 MR. WILLIAMS: I will pass this witness.

23 THE COURT: Counsel? Microphone, sir.

24 MR. LEWIS: Sorry, Judge.

17 : 38 25 THE COURT: You can pull it in a little bit.

Lewis Cross of Special Agent Tonya Graham

17 : 38

1 **CROSS-EXAMINATION**

2 *BY MR. LEWIS:*

3 Q Good afternoon, Ms. Graham.

4 A Good afternoon.

17 : 38

5 Q My name is Don Lewis, and I represent Dr. Craig. I would
6 like to ask you a couple follow-up questions to your testimony.

7 A Yes, sir.

8 Q Do you know what a flexion test is?

9 A Can you repeat that?

17 : 38

10 Q Do you know what a flexion test is?

11 A No, sir.

12 Q Do you know what a straight leg raise is?

13 A No, sir.

14 Q Do you know what a reflex test is?

17 : 39

15 A Yes.

16 Q What is a reflex test?

17 A When I sit on the exam table and they take the little
18 hammer and hit your knee and check for your reflexes.

17 : 39

19 Q Do you know what a strength test is?

20 A Yes.

21 Q And what is that?

22 A Testing the strength in your extremities.

23 Q Do you know how that is performed?

24 A Sometimes it is performed by squeezing your hand or they
25 will tell you to stand still and you push towards their hand,

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17 : 39 1 like positive, negative energy.

2 Q On the day -- on June 15th, 2017, did you receive a flexion
3 test?

4 A I don't know what that is.

17 : 39 5 Q That's right. You don't know what that is. All right.

6 I'm going to need to take you to your patient records.

7 Specifically, I would like to start on page four.

8 THE COURT: Do you need the unit, sir?

9 MR. LEWIS: I was hoping they could project page four.

17 : 40 10 THE COURT: Hang on a second. Is it on your computer?

11 MR. LEWIS: It is on my computer.

12 THE COURT: Hang on one second. I can lock in your
13 computer. I believe this is it. It's either that one or this
14 one.

17 : 40 15 Did you check this out with Ellen ahead of time
16 for compatibility?

17 MR. LEWIS: I did not.

18 THE COURT: Is this on your computer?

19 MR. LEWIS: This is my personal computer.

17 : 40 20 THE COURT: It's not the system?

21 MR. LEWIS: No.

22 THE COURT: There is a way to lock into it but you
23 can't do it now. If you want to use the overhead projector,
24 you are certainly free to do so.

17 : 41 25 MR. LEWIS: May I approach to get the hard copy?

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17 : 41 1 THE COURT: Sure. Sure. It will take about 30
2 seconds to lock in. That's probably it. If you want to try a
3 document, we will make sure it works. There it goes. Okay.

17 : 41 4 Let me ask you this: Do you want the light out
5 or is that sufficient for you?

6 MR. LEWIS: I think that's going to be sufficient,
7 Judge.

8 THE COURT: Go right ahead.

9 *BY MR. LEWIS:*

17 : 42 10 Q Ms. Graham, are you familiar with the document that is
11 being depicted on the screen?

12 THE COURT: You can zoom in some if you want to.

13 MR. LEWIS: I can see it.

14 THE COURT: Go ahead and show him where the button is.

17 : 42 15 *BY MR. LEWIS:*

16 Q Ms. Graham, are you familiar with the document that's being
17 depicted by the overhead here?

18 A Yes, sir.

19 Q And what is that document?

17 : 42 20 A That's a new patient form that I filled out.

21 Q Is this a document that you filled out?

22 A Yes.

23 Q Was this document filled out on the date of your visit to
24 Gulfton that your testimony has covered?

17 : 42 25 A Yes, sir.

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17 : 42 1 Q At the bottom of this form, do you see a signature depicted
2 there?

3 A Yes.

4 Q And do you see the date that that signature was added?

17 : 43 5 A Yes.

6 Q Okay. Let's look at this form a little bit. Does this
7 form ask you whether or not you have insurance?

8 A Yes, it does.

9 Q And did you indicate if you had insurance?

17 : 43 10 A I did not.

11 Q Does this form ask you other information regarding whether
12 or not you had a friend, a relative to contact in the event of
13 an emergency?

14 A What is your question, sir?

17 : 43 15 Q Does this form ask you information or questions to provide
16 the name of a friend or relative in the event of an emergency?

17 A Yes, it did.

18 Q Did you fill out that information?

19 A I did not.

17 : 43 20 Q Why did you not fill out that information?

21 A I did it on purpose.

22 Q And what does that mean? You did it on purpose?

23 A Yes. That I wanted to see if the documents were going to
24 be read and I was going to be asked about it.

17 : 44 25 Q On the date of your visit of 6/15, you on purpose also

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1 indicated that you didn't have insurance?

2 | A Yes.

3 Q Because you indicated that you didn't have insurance, would
4 it be fair for the clinic to assume that you were paying in
5 cash for this visit?

6 | A Yes.

7 Q I'm showing you now another page of your patient record. I
8 will try to pull it down a little bit.

9 Are you familiar with this document?

10 A No, sir. Can you pull it back some, please?

11 Q Can you take a look at it and see if you are familiar with
12 this document?

13 A Can you pull it out and let me see the entire document,
14 please?

15 MR. LEWIS: I'm trying not to remove it from the file
16 for fear that it will get out of order.

17 THE COURT: Is that making it smaller or bigger?

18 MR. LEWIS: Smaller.

19 THE COURT: We need the light out. It will be much

20 better for you if you are going to be using that. All right?
21 Zoom it in exactly where you want it. Or if you want the whole
22 thing, that's it. There it is.

23 || *BY MR. LEWIS:*

24 Q First, Ms. Graham, are you familiar with the document
25 that's being shown on the overhead now?

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17 : 46 1 A I can't honestly say because -- can you push it up some so
2 I can see -- I don't know which document it is. Is there more
3 at the bottom? Is there a title on it?

17 : 46 4 Q There is no title on it other than what you are seeing on
5 the screen now, which is fuzzy now.

6 A Okay.

7 MR. LEWIS: Judge, if I can see the USB --

8 THE COURT: If you want to zoom it in a little bit
9 more, it will clear up. There it goes. Move it a little bit
17 : 47 10 more. That's fine. Move it up and down. But can everybody at
11 least see that? Yes, the jury says they can see it.

12 BY MR. LEWIS:

13 Q Now, can you more or less take a minute and just take a
14 look at this document and see if this is the document that you
17 : 47 15 were presented as part of your new patient intake packet?

16 THE COURT: At the bottom, is there a signature?

17 MR. LEWIS: Not on this particular document.

18 THE WITNESS: I don't know. I can't say.

19 BY MR. LEWIS:

17 : 47 20 Q So you don't remember seeing this document?

21 A I don't remember.

22 Q But would it be fair to assume that if it is part of the
23 file --

24 THE COURT: What file?

17 : 47 25 MR. LEWIS: The government's file that has been

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1 entered into evidence, this would be a document that you should
2 have seen on 6/15/2017.

3 MR. HELFMEYER: I'm objecting to characterization that
4 it was the government's file. This was the file that was
5 seized from the clinic.

6 THE COURT: Seized from the clinic.

7 MR. LEWIS: I misspoke. The government's exhibit.

8 THE COURT: While we are talking, was it in the file
9 for this patient in the clinic?

10 MR. HELFMEYER: Yes, Your Honor.

11 THE COURT: Now, we have it narrowed down. But you
12 don't remember perhaps seeing that? Or do you remember?

13 THE WITNESS: I can't say. I need to see it together.

14 THE COURT: There it is.

15 THE WITNESS: There is more to it.

16 THE COURT: Are there more pages, you mean?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Is there a second page?

19 MR. LEWIS: Yes. There is a second page. Judge, I
20 think I am just going to take it out. And if I can approach
21 the witness and maybe she can see all of it.

22 THE COURT: All right. By the way, tomorrow talk to
23 the case manager and see if she can plug in your system in here
24 or at least get the IT people up here to give you a hand.

25 MR. LEWIS: I will. May I approach, Judge?

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17 : 48 1 THE COURT: You needn't ask permission. Go right up.

2 That's another thing. You are going to have
3 attorneys requesting permission to approach a witness, which is
4 usual in federal courts. It doesn't matter to me, unless they
17 : 49 5 start badgering the witness, then we will hear from the other
6 side. And I will back them off.

7 Assuming you don't badger the witness, show her
8 what you have got.

9 *BY MR. LEWIS:*

17 : 49 10 Q Ms. Graham, could you take a look at the document that I
11 was asking you some questions of? Just take a minute to look
12 at all -- I think it is four pages there.

13 A (Compliance.)

14 Q Do you recall being presented this information when you
17 : 49 15 went to Gulfton on June 15, 2017?

16 A I don't know if it was in the new patient packet, but there
17 were several packets of paper. But it was in there.

18 THE COURT: The question is: Do you recall seeing
19 that at the time?

17 : 50 20 THE WITNESS: Yes. At some point in time, yes.

21 *BY MR. LEWIS:*

22 Q Did you read it?

23 A No, I did not.

24 Q Why did you not read it?

17 : 50 25 A It wasn't important.

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17 : 50 1 Q So it wasn't important to you -- as part of this, these
2 four pages, can you tell me what the first line on this page,
3 page three says?

17 : 50 4 A "Informed consent and pain management agreement as required
5 by the Texas Medical Board. Reference, Texas Administrative
6 Code, Title M22, Part 9, Chapter 170."

17 : 51 7 Q Does it appear this is a document you should read and you
8 should sign or consent to this document as being a new patient
9 at Gulfton?

17 : 51 10 A Yes.

11 Q And you are saying you didn't read it?

12 A That is correct. I skimmed over it.

13 Q Okay. Let's read it now.

14 A Okay.

17 : 51 15 THE COURT: Not the whole thing.

16 BY MR. LEWIS:

17 Q Not the whole thing. Does this document refer to whether
18 or not you are consenting to treatment at Gulfton clinic?

19 A It says "Consent to treatment and/or drug therapy."

17 : 51 20 Q Does page one of this document seem to indicate side
21 effects of the medication that you might receive at Gulfton
22 Clinic?

23 A It says "I understand that the most common side effects
24 that could occur in the use of drugs."

17 : 51 25 Q And does it seem to list side effects related to the drug

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17:51 1 therapy that you might receive at Gulfton Clinic?

2 A Yes.

3 Q Is it specific as to specific side effects?

4 A Included but not limited to, yes.

17:52 5 Q And what are some of the side effects that it's listing?

6 A Constipation, nausea, excessive drowsiness, itching,
7 urinary retention.

8 Q So did you not believe that it was important for you to
9 understand that there might be side effects related to any
17:52 10 medication?

11 A No. Because I'm not a real patient.

12 Q That's a good question. So a real patient though, it's
13 important for them to read this -- these type documents?

14 A Yes.

15 Q And as far as Gulfton was concerned that day, did Gulfton
16 believe that you were a real patient?

17 A Yes.

18 Q So someone at Gulfton assumed that you read this document?

19 A They assumed, yes.

17:53 20 Q Does this document also cover a contract that you are
21 making with the clinic in the event that you are prescribed
22 medication?

23 A A contract?

24 Q Well, I will ask it another way. Does this document seem
17:53 25 to indicate that it's an agreement that is required by the

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17 : 53 1 Texas Medical Board?

2 A I don't understand your question.

3 Q Again, what does the first sentence on page three say?

4 A "Informed consent and patient pain management agreement as
17 : 53 5 required by the Texas Medical Board, Reference, Texas
6 Administrative Code, Title M22 Part 9, Chapter 170."

7 Q Does it appear that this is something that's required by
8 the Texas Medical Board, which is an agency that --

9 MR. HELFMEYER: Objection to Counsel testifying.

10 THE COURT: What?

11 MR. HELFMEYER: Counsel is testifying.

12 THE COURT: Sustained. You can lead because it is the
13 other side's witness. But as to the form of the question,
14 sustained.

15 MR. LEWIS: I will ask a better question, Judge.

16 *BY MR. LEWIS:*

17 Q Does it appear this document is required by the Texas
18 Medical Board?

19 A Yes.

17 : 54 20 Q And it does appear that it is required in the treatment of
21 a pain patient?

22 A Yes.

23 Q And did you sign this document?

24 A Yes.

17 : 54 25 Q And did you sign it on the date that you received treatment

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17 : 54 1 at the Gulfton Community Health Center?

2 A Yes.

3 Q Could you look at the last page of this paperwork that I
4 just received -- that I just gave you. What does the title of
17 : 54 5 this document appear to be?

6 A "HIPAA complaint release of patient medical information
7 authorization form."

8 Q Are you aware of what HIPAA is?

9 A It's requirements you have -- as a patient you have to
17 : 55 10 allow your medical records to be released, to be released to
11 someone else.

12 Q Does HIPAA also regulate third parties that might receive
13 the medical information related to someone else?

14 A I don't know.

17 : 55 15 Q You don't know. Does HIPAA require Gulfton clinic not to
16 release your information to anyone that's not authorized to get
17 that medication -- I mean that information?

18 A I don't know.

19 Q So would HIPAA regulate the release of your information to
17 : 55 20 someone else in the clinic?

21 A If I give them authorization, yes.

22 Q But without that authorization, HIPAA would restrict them
23 from doing that?

24 A Yes.

17 : 56 25 Q Okay. Does HIPAA cover -- in releasing your information,

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17 : 56 1 does HIPAA cover your identity?

2 A I don't know.

3 Q So you are not aware of whether or not HIPAA covers release
4 of medical information as it relates to your identity?

17 : 56 5 A Your identity would be in the medical records.

6 Q Okay. And also in your medical records, would it be
7 medical conditions?

8 A Yes.

9 Q Now, can you -- would you be able to record or document
17 : 56 10 someone's identity using your cell phone?

11 A Can you ask the question again, please?

12 Q Would you be able to record or document another party's
13 identity by the use of your cell phone?

14 A Their identity, meaning their picture?

15 Q Could you take their picture?

16 A With my cell phone, yes.

17 Q Could you take their picture inside the clinic?

18 A Yes.

19 Q Could you take Dr. Craig's picture inside the clinic?

17 : 57 20 A Yes.

21 Q And if you took a patient's picture inside the clinic and
22 they didn't give you authorization, would that be a violation
23 of HIPAA?

24 A No.

17 : 57 25 Q So you don't believe that that would be a violation of

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17:57 1 HIPAA to take someone's picture and release it to a third
2 party?

3 THE COURT: You mean a violation of that specific law?

4 BY MR. LEWIS:

17:57 5 Q Of the HIPAA law.

6 A No.

7 Q So that's your understanding?

8 A Yes. I'm confused, but yes.

17:58 9 Q Could you take a picture of someone else's HIPAA record and
10 release it to a third party?

11 A No.

12 Q Would that be a violation of HIPAA?

13 A Yes.

14 Q Would it be possible for you to take pictures of an
15 individual's patient record while you were at the clinic with
16 your cell phone?

17 A Can you ask the question again? I don't understand.

18 Q Is it possible for you to take the picture of another
19 patient's patient record?

17:58 20 THE COURT: At the clinic? While you were there at
21 the clinic, did you have access to those records?

22 THE WITNESS: No, I did not.

23 BY MR. LEWIS:

24 Q Did you see patient records?

17:58 25 A I saw people filling out their packet.

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17 : 58 1 Q Did you see any patient records behind the counter when you
2 walked up to the counter?

3 A They were in folders.

4 THE COURT: They were in folders?

17 : 58 5 THE WITNESS: Yes. They were in folders.

6 BY MR. LEWIS:

7 Q Could you determine whether or not there were names on
8 those patient records?

9 A No, I could not.

10 Q Did they have any outside markings on them at all?

11 A Not that I could see.

12 Q But you could see them; is that correct?

13 A Yes.

14 Q And you could have taken a picture of them with your cell
15 phone?

16 A No.

17 Q Why couldn't you have taken a picture with your cell phone?

18 A Because cell phones are not allowed. When you are at the
19 counter, you can't just have your phone right there. You can
20 have your phone. You just can't be on it.

17 : 59 21 Q If you had your cell phone, if a patient had their phone,
22 could they have taken a picture through the window at the
23 counter of the patient files?

24 A Yes.

17 : 59 25 THE COURT: All right. At that point -- we always

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1 adjourn between 6:00 and 6:05. I think we reached a time to
2 turn the lights on there. We are going to complete our
3 testimony for today. It is moving right along. And, remember,
4 tomorrow is the only morning we get underway at 11:30. We will
5 go a full day and we will start tomorrow at 11:30.

8 || (Court adjourned at 6:00 p.m.)

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled cause.

13 || Date: February 23, 2018

1st Mayra Malone

Mayra Malone, CSR, RMR, CRR
Official Court Reporter

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